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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~251~~. 5-5

ROBERT H. OBER, APPELLANT,

vs.

CHARLES GALLAGHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

ABC

FILED SEPTEMBER 18, 1874.

In 1873 Sec'y Smith wrote seems to enclose a transcript

Oct 21 1876

Affirmed

Mr Justice Swayne

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1 Be it remembered that on the 3rd day of February, anno Domini, one thousand eight hundred and seventy, came into the clerk's office of the circuit court of the United States for the eastern district of Arkansas Charles Gallagher, by Watkins and Rose, esquires, his solicitors, and filed therein a bill of complaint and exhibits thereto against Waddy Thompson and Robert H. Ober, which bill of complaint is in the words and figures following, to wit:

Bill of complaint.

To the Hon. Dillon, judge of said court, in chancery sitting:

Your orator, Charles Gallagher, who is a citizen of the State of Louisiana, brings this his bill of complaint against Waddy Thompson, who is a citizen of the State of Tennessee, and Robert H. Ober, who is a citizen of the State of Arkansas.

And thereupon your orator complains and says, that on the 15th day of January, 1867, one John T. Fleming and Mary E. Fleming, his wife, made their certain deed of conveyance to the said Waddy Thomp-
2 son, setting forth that, in pursuance of an agreement between the said Fleming and Thompson, made on the 11th day of December, 1866, and for and in consideration of the sum of sixty thousand dollars, to be paid by the said Thompson to the said Fleming in ten equal annual instalments of six thousand dollars each, the first to be paid on the first day of March, 1867, and one instalment annually thereafter, without interest, for which the said Thompson had executed to the said Fleming his ten promissory notes, bearing even date with said conveyance, the said Fleming and wife conveyed unto the said Thompson, and his heirs and assigns, forever, a certain plantation, situated on both sides of Clear Lake, partly in Pulaski County and partly in Prairie County, in the State of Arkansas, (and in the district aforesaid,) known as the Fleming Place, owned by said Fleming, in township two (2) south of the base line, in range ten (10) west, of the fifth principal meridian, and township two (2) south, in range (9) west, of said meridian, containing in all not less than four thousand (4,000) acres, and particularly known and described on the plats of the
3 public surveys, as far as the sectional subdivisions could then be ascertained, as follows: The east half of the southeast quarter and the east half of the northeast quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing one hundred and sixty, (160,) acres; the southeast quarter of section twenty-eight, (28,) the east half of the northeast quarter of section twenty-eight, (28,) the west half of the northwest quarter of section twenty-seven, the southeast quarter of the northwest quarter of section twenty-seven, (27,) the southwest quarter of the southwest quarter of section twenty-two, (22,) the west half of the southwest quarter of section twenty-seven, (27,) and the northeast quarter of the southwest quarter of section twenty-seven, (27,) all in township two (2) south, in range nine (9) west, in the county of Prairie, containing five hundred and twenty (520) acres; the west half of the southeast quarter of section eighteen, (18,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing eighty (80) acres; the southwest quarter of the northeast quarter, the south half of
4 the northwest quarter, and the northwest quarter of the northwest quarter of section seventeen, (17,) the northeast quarter of section eighteen, (18,) the east half of the southeast quarter, and the northeast quarter of the northwest quarter of section eighteen, (18,) all

in township two (2) south, in range nine (9) west, in the county of Prairie, containing four hundred and forty (440) acres; the northwest fractional quarter of fractional section nineteen, (19,) the west half of southwest fractional quarter of fractional section nineteen, (19,) (all west of Clear Lake,) the north half of the north half of section twenty, (20,) the east half of the northeast quarter of section seventeen, (17,) all in township two (2) south, in range nine (9) west, in the county of Prairie, containing four hundred and eleven $\frac{25}{100}$ ($411\frac{25}{100}$) acres; the south half of section seventeen, (17,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing three hundred and twenty (320) acres; the southeast quarter and the west half of the northeast quarter of section nineteen, (19,) part of the west quar-
5 ter and part of the southwest quarter (east of Clear Lake) of section nineteen, (19,) all in township two (2) south, in range nine (9) west, in the county of Prairie, containing three hundred and six and $\frac{38}{100}$ acres; the southwest quarter of section twenty-one, (21,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing one hundred and sixty (160) acres; the south half of the southeast quarter of section twenty, (20,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing eighty (80) acres; the east half of the northeast quarter of section nineteen, (19,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing eighty (80) acres; the south half of the southeast quarter of section twenty-nine (29) and the north half of the northeast quarter of section thirty-two, (32,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing one hundred and sixty (160) acres; the northwest quarter of the southeast quarter of section twenty-four,
6 (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, contain' forty (40) acres; the southwest quarter of the southeast quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing forty (40) acres; the northeast quarter of the northwest quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing forty (40) acres; the northwest quarter of the northeast quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing forty (40) acres; the southwest quarter of the northeast quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing forty (40) acres; the south half of the northwest quarter of section twenty, (20,) in township two (2) south, in range nine (9) west, in the county of Prairie, containing eighty (80) acres; the southwest quarter of section twenty-four (24) and the northwest quarter of section twenty-five, (25,) in township two (2) south, in range ten (10) west, in the county of
7 Pulaski, containing three hundred and twenty (320) acres; also the following-described tract or parcel of land, viz: Commencing on the east bank of Clear Lake, at the corner between sections eighteen (18) and nineteen, (19,) in township two (2) south, in range nine (9) west, and running north of east to the half-mile line of section eighteen, (18,) so as to embrace five acres, more or less, of the southeast quarter of the southwest quarter of said section eighteen, (18;) also that part of said section eighteen (18) west of Clear Lake, and that part of section thirteen, (13,) in township two (2) south, in range (10) west, lying west of Clear Lake, in the county of Pulaski, containing five (5) acres, more or less; the northeast quarter of section twenty-nine, (29,) in township two (2) south, in range nine (9) west, in the county

of Prairie, containing one hundred and sixty (160) acres; the southeast quarter of the northwest quarter of section twenty-four, (24,) in township two (2) south, in range ten (10) west, in the county of Pulaski, containing forty (40) acres; it being expressly agreed between the said Fleming
8 and the said Thompson, by the terms of the said deed of conveyance, that the said Fleming and wife retained a lien upon all of said lands for the payment of ten promissory notes given by said Thompson to Fleming for the said instalments of said purchase-money; which deed, having been duly acknowledged, was recorded in the recorder's offices in the counties of Pulaski and Prairie, in accordance with the statute in such case made and provided. A copy of the same is herewith filed, marked "Exhibit A," and made part hereof, the original being in the possession of the defendants; and the plaintiff prays that they may be compelled to bring the same into court here for inspection.

And your orator says that, at the time of the making of the said deed, Elbert H. English, an attorney at law, living in the city of Little Rock, Arkansas, was the acting legal adviser of the said Thompson, and has continued to be such ever since, and still so continues, attending to all the business of the said Thompson of a legal character
9 in the State of Arkansas, and he charges that the said deed of conveyance was prepared by the said English or by some one under his direction.

That on the 20th March, 1867, your orator became the owner of one of said notes in due course of trade by assignment from said Fleming, who is a citizen of the State of Tennessee, and was at the time said assignment was made; that is to say, a note for six thousand dollars, dated January 15, 1867, payable by the said Thompson to the said Fleming on the first day of March, 1869, expressed on its face as being given for one-tenth part of the purchase-money of the said "Fleming plantation," on which your orator brought suit against the said Thompson in the fifth district court for the parish of Orleans, in the State of Louisiana, on the 12th day of March, 1869; in which suit such proceedings were had that your orator, on the 7th day of June, 1869, recovered judgment against the said Thompson for the full amount of said note, interest thereon, and costs of suit, which judgment remains wholly
10 unsatisfied and nowise reversed, annulled, or otherwise vacated. Your orator herewith files a copy of the proceedings and judgment aforesaid, marked "Exhibit B," and made part hereof.

Your orator further shows that prior to any of the events and proceedings aforesaid, that is to say, on the 21st day of February, 1866, one Jordan N. Embry, by the judgment of the Prairie circuit court in the State of Arkansas, recovered judgment against the said Fleming for the sum of six hundred and forty-three dollars for his debt, together with the sum of sixty-three dollars for his damages, with interest on said damages, at the rate of ten per centum per annum, from the date of such judgment until paid, and costs of suit; and the said Embry caused an execution to issue thereon, dated April 29, 1867, and the same to be levied on the greater part of said lands described in the said levy as the south half of the southeast quarter of section twenty, (20,) eighty acres; the north half of the northeast quarter of section thirty-two, (32,) the southeast quarter of section twenty-
11 eight, (28,) the east half of the northeast quarter of section twenty-eight, (28,) the west half of the northwest quarter of section twenty-seven, (27,) the northeast quarter of the southwest quarter of section twenty-seven, (27,) the southwest quarter of section twenty-one, (21,) the south half of the southeast quarter of section twenty, (20,) the south

half of section seventeen, (17,) the southeast quarter and west half and the northwest quarter and southwest quarter of section nineteen, and the east half of the northeast quarter of section nineteen, (19,) and the northwest fractional quarter and the west half of the southwest fractional quarter, and the north half of the north half of section twenty, (20,) and the east half of the east half of section seventeen, (17,) the south half of the northwest quarter of section twenty, (20,) and the east quarter of section twenty-nine, (29,) and the northwest quarter of the northeast quarter of section seventeen, (17,) and the south half of the northwest quarter of section seventeen, (17,) and the northwest quarter of the northwest quarter of section seventeen, (17,) all in township
12 two (2) south, in range nine (9) west; also the west half and the north half of the south half of section fifteen, (15,) in township two (2) south, in range eight (8) west.

And your orator further says, that the said lands were sold under the said execution at the court house of Prairie County on the 19th August, 1867, and that at the said sale the said English publicly announced that he would buy in the said lands for the said Thompson, and that the money paid for them would be a credit on the outstanding notes held by said Fleming or his assignees; which had the effect to stifle bidding at the sale, and the said lands were all stricken off to said English at mere nominal sums, so that the entire lands levied on as aforesaid, embracing nearly three thousand acres, a great part of the same being in a high state of cultivation, and worth not less than forty thousand dollars, were purchased at sale by said English, acting as the agent and attorney of Thompson, for the sum of eight hundred and forty-four dollars and seventy cents, and no more.

13 Your orator herewith files a copy of the sheriff's deed made in pursuance of said sale, conveying the said lands to said English, and makes the same, marked "Exhibit C," a part of this bill. And the said plaintiff says that at the time of the rendering of said judgment in favour of said Embry against said Fleming, the said English was retained as the attorney of said Fleming to attend to his business in general, and particularly in that particular case, for which case the said Fleming has paid him his fees.

Your orator cannot say from his own knowledge that this proceeding was the result of a combination between the parties, including Fleming, to fraudulently render ineffectual the lien held by your orator on the said land for the payment of the said note and the other notes given for the purchase-money of the said lands, all of which had been previously assigned by Fleming; but however that may be, he says that the said Thompson, by that time become insolvent, and driven to all sorts
14 of desperate pecuniary shifts, no sooner perceived the situation than it occurred to him that if the sale to English should be held to convey a title paramount to that held by himself through Fleming, and the said English would consent to hold the title so acquired by him nominal' for himself, yet practically and really for the said Thompson, the latter might sell the land free from the lien, get English to convey the same as his own property, on payment of the amount bid by him at the execution sale, and perhaps a small premium or douceur superadded, while the greater part of the purchase-money, all of it except the small amount aforesaid, should be paid to the said Thompson and settled in the manner hereinafter mentioned.

Your orator further says, that a purchaser being needed as the first step towards a successful issue of this plan, he was found in the person of the defendant Ober, whose legal adviser in all matters, and par-

ticularly in making this purchase, was also the said English,
15 who was cognizant of the facts above stated, and who, in the due and proper discharge of his duties as such, advised the said Ober fully of the same and of the risks involved in the purchase. Nevertheless your orator says that the said Ober purchased the said lands nominally from said English—that is, the lands sold under execution, which constituted by far the most valuable part of said estate—the said English making him a mere quit-claim deed therefor, and receiving but little if any more than the amount paid by him therefor; that the said English was never in the possession of the said lands or of any part thereof, the same remaining in the undisturbed possession of the said Thompson until he sold to the said Ober, as will be hereinafter mentioned; that the said English made said deed to said Ober, bearing date the 29th day of February, 1868, the same purporting to be made on the consideration of twenty-seven thousand dollars, a copy of the same being herewith filed, marked "Exhibit D," and made part hereof.

And your orator further charges, that the said English did not
16 receive above one thousand dollars on such sale, and that the residue either went to or was secured to the said Thompson, and that whatever was paid said English was paid him by said Thompson, and that the said Thompson conveyed the said lands lying then in Pulaski County to the said Ober, by his deed of conveyance, dated on the 29th day of February, 1868, for the nominal consideration of five thousand dollars, alleged in the conveyance to have been paid in cash, and that the said Ober received possession of all of said lands, as well those lying in Prairie County as those lying in Pulaski County, from the said Thompson, and has ever since and does yet remain in the exclusive possession of the same,

A copy of the said deed made by Thompson and wife to said Ober is herewith filed, marked "Exhibit E," and made part hereof; and your orator prays that the said Ober may be compelled to produce the original thereof here in court on the hearing of this cause.

17 Your orator does not profess to know the precise terms of the said sale from said Thompson to said Ober, as in this matter, as usual in said cases, the details of the transaction have been kept in profound secrecy; nor can he place any reliance on the recitals and statements of the said conveyance, which he has reason to believe and does believe were designed to conceal and not to express the truth.

But your orator charges that the said sale was made with a full knowledge on the part of the said Thompson and the said Ober of all the facts above stated, and that they fraudulently procured the said English to make the said conveyance as if the said land had belonged to him by reason of his said purchase at the said execution sale, whereas they both well knew that the said purchase was made by him, not with a view to defeat the title which said Thompson had acquired by his purchase from Fleming, but in order to strengthen and protect it; and that the said English merely held whatever title he had acquired as a trustee for his client Thompson. And your orator alleges that in
18 the said pretended purchases said Ober paid no money whatever, but that he took said lands only in payment of antecedent debts due from said Thompson to said Ober, the latter well knowing the former to be at that time insolvent.

That the said sale made to Ober is in secret trust for the use of Thompson, made and accepted with a view to hinder, delay, and defraud the creditors of said Thompson, and particularly your orator, as the assignee and owner of said note.

That the said Fleming is insolvent, and has availed himself of the benefit of the bankrupt law of the United States; and that the said Thompson and he were both, at the time of the said sale under execution, and have been ever since, hopelessly insolvent.

Plaintiff prays that the said defendants may be required to answer the following interrogatories:

1. State under what circumstances the said conveyances from
19 said Thompson and English were made to said Ober.

2. State whether, during the time of the occurrences herein named, the said English was not the legal adviser and attorney of both Thompson and Ober, and also of said Fleming.

3. State severally whether, before the said conveyances were made, you were not informed by said English that he had made the said purchase at said execution sale, and that he had purchased for the use and benefit of said Thompson and as his friend and attorney, and that he had so publicly announced at the time of such sale.

4. State, without any mental reservation, how much the said Ober, agreed to pay said Thompson in the said purchase, how much he agreed to pay to said English, how much he has paid said English, how much he has paid said Thompson, and when and how such payments were made, and whether Thompson did not previously owe said Ober and what part of the debt was extinguished by said purchase.

5. State, without any evasion, how much of the purchase-money
20 for said lands, as agreed upon between said Thompson, Ober, and English, was unpaid at the time of the making said conveyances to said Ober, and how the debt for the same was evidenced; whether by notes, bills, or otherwise, the dates and amounts of the same severally, and how the said debt was secured.

6. Set forth the entire agreements made between the said Thompson, English, and Ober, with all the details of the same in every particular, impartially and fully, and state what part of the same was in writing and what part was not, and produce in court all the writings pertaining thereto.

7. State who is in possession of the said lands, and from whom, and when, and how the said possession was obtained.

8. State whether the said English ever was in the actual possession of any of said lands, and, if so, of what part, and how the said possession was evidenced.

9. State whether said Thompson did not owe said Ober at the time that said purchase was agreed on, and how much, when due, how
21 evidenced, and how far the said indebtedness entered into said purchase.

10. State how much was paid said English, and by whom and how the same was paid.

The premises being seen, your orator prays that your orator may be decreed to have a lien on the said lands for the amount of the said judgment, and that the said defendants may be decreed to pay the same to your orator, with all lawful interest thereon, and that in default of such payment the said lien may be foreclosed, the equity of redemption of the defendants barred, and that the said lands, or so much thereof as may be necessary, may be sold in order to pay the said debt; and that your orator may have such other and further relief as the equity of his case may require and to your honour shall seem meet.

WATKINS & ROSE, *Sol's.*

22 *Exhibit A to bill.*

Which Exhibit A is as follows, to wit:

This deed of conveyance, made and entered into on this the fifteenth day of January, A. D. 1867, by and between John T. Fleming, and his wife, Mary E. Fleming, of the county of Prairie, of the first part, and Waddy Thompson, of the city of New Orleans, of the second part, witnesseth: That the said parties of the first part, in pursuance of an agreement between the said John T. Fleming and Waddy Thompson, made on the 11th day of December, A. D. 1866, and for and in consideration of the sum of sixty thousand dollars, to be paid by the said Waddy Thompson to the said John T. Fleming in ten equal annual installments of six thousand dollars each, the first to be paid on the first day of March, 1867, and one installment annually thereafter, without interest, for which the said Waddy Thompson has executed to the said John T. Fleming his ten promissory notes, bearing even date herewith, and for and in consideration of the sum of one dollar to the parties of the first part in hand paid by the said Waddy Thompson, the receipt whereof
23 is hereby acknowledged, the said parties of the first part have granted, bargained, sold, aliened, enfœffed, and conveyed, and do by this deed of conveyance grant, bargain, sell, alien, enfœff, and convey, unto the said Waddy Thompson, his heirs and assigns forever, a certain plantation, situated on both sides of Clear Lake, partly in Pulaski County and partly in Prairie County, in said State of Arkansas, known as the Fleming plantation, made up of all the lands owned by said John T. Fleming, in township two south of the base line, in range ten west of the fifth principal meridian, and township two south of range nine west of said meridian, containing in all not less than four thousand acres, and particularly known and described on the plats of the public surveys, as far the sectional subdivisions can now be ascertained, as follows:

(For the description of the land, see bill of complaint, page' 3–7.)

To have and to hold the lands aforesaid, with all the improvements thereon and the appurtenances thereto attached and belong', unto the said Waddy Thompson, his heirs and assigns, in fee-simple, forever.
24 And the said parties of first part, for themselves, their heirs, executors, and administrators, do covenant with the said Waddy Thompson, his heirs and assigns, that they are seized in fee of all of the aforesaid lands to the quantity above mentioned, (that is to say, four thousand acres;) that they have a perfect right to convey the same; that the same are free from all incumbrances, and that they will make any future conveyances and assurances necessary to perfect the title to the same or any part thereof that may be defective, and will and do warrant and defend the title to the same unto the said Waddy Thompson, his heirs and assigns, against the lawful claims of all persons whatsoever. But it is expressly agreed by the parties of the first and second part that the said parties of the first shall and do hereby retain a lien upon all of said lands for the payment of said ten promissory notes given for the purchase-money, and when the same are fully paid off said lien is to stand released and discharged.

And the said Mary E. Fleming, wife of the said John T. Fleming, for and on her part and behalf, does hereby freely and fully
25 relinquish and release unto the said Waddy Thompson, his heirs and assigns, all her right and claim to dower in and to all the aforesaid lands conveyed and intended to be conveyed, granted, &c.

In witness whereof the said parties of the first part have hereunto

subscribed their names and affixed their seals the day and year first above written.

JOHN T. FLEMING. [SEAL.]
MARY E. FLEMING. [SEAL.]

[R. S., $60.00.]

STATE OF ARKANSAS,
County of Pulaski:

On this day personally appeared before the undersigned, a duly commissioned and acting justice of the peace within and for said county and State, John T. Fleming, whose name is subscribed to the foregoing deed of conveyance, and who is to me personally known, and acknowledged that he had executed the same for the purposes and *and* consideration therein mentioned and set forth; and I do so certify.

Given under my hand as such justice this the 15th day of January, 1867, at Little Rock, Arks.

26 W. WOOLFORD, *J. P.*

[R. S., 5 cts.]

STATE OF TENNESSEE,
County of Williamson:

On this day voluntarily appeared before the undersigned, clerk of the county court within and for the county and State last aforesaid, which is a court of record, having a seal, Mary E. Fleming, wife of John T. Fleming, whose name is subscribed to the foregoing deed of conveyance, and who is to me personally well known, and in the absence of her said husband declared that she had freely and voluntarily signed and sealed the relinquishment of dower therein expressed, for the purposes therein contained and set forth, without compulsion or undue influence of her said husband.

In testimony whereof I, William Cummins, clerk of said court, have hereunto subscribed my name and affixed the seal of said court, at office in the town of Franklin, county and State aforesaid, on this the 28th day of January, 1867.

[L. S.] Attest: WM. CUMMINGS, *Clerk.*

[R. S., 5 cts.]

27 STATE OF ARKANSAS,
County of Pulaski, set:

I, Thomas H. Walker, clerk of the circuit court and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 26th day of February, A. D. 1867, and the same is now duly recorded in record-book H, No. 2, pages 441, 442, 443, 444, & 445.

In testimony whereof I, Thomas H. Walker, clerk of said circuit court, have hereunto set my hand and affixed the seal of said court at my office this 27th day of February, A. D. 1867.

[L. S.] THOS. H. WALKER,
Clerk and ex-officio Recorder.

STATE OF ARKANSAS,
County of Pulaski, ss:

I, Thomas H. Walker, clerk of the circuit court and ex-officio
28 recorder in and for the county aforesaid, do hereby certify that the preceding nine pages of transcript contain a true and complete copy of the deed of conveyance, acknowledgments, and clerk's

certificate of record therein mentioned and set forth, as all of the same appears upon the record in my office.

In testimony whereof I have hereunto set my hand as such clerk and affixed the seal of said court on this 11th day of April, A. D. 1868.

[L.S.] THO. H. WALKER,
Clerk.

Exhibit B to bill.

Which Exhibit B is as follows, to wit:

STATE OF LOUISIANA.

Fifth district court for the parish of Orleans.

Petition.—Filed March 12, 1869.

CHARLES GALLAGHER
vs.
WADDY THOMPSON } No. 407.

To the honorable the judge of the fifth district court for the parish of Orleans:

The petition of Charles Gallagher, residing in New Orleans,
29 respectfully represents that Waddy Thompson, residing in New Orleans, is justly and truly indebted to your petitioner in the sum of six thousand dollars, with legal interest from the 4th day of March, 1869, and six $\frac{74}{100}$ dollars costs of protest for this, to wit, that your petitioner is the holder and owner of a certain promissory note made by the said Waddy Thompson, dated Little Rock, Arkansas, January 15, 1867, for the said sum of six thousand dollars, payable on the 1st March, 1869, to the order of John J. Fleming, and by him endorsed.

That at maturity said note was protested for non-payment, as will more fully appear from the note and protest annexed hereto and made part of this petition.

And that, although amicably requested, said Waddy Thompson neglects and refuses to pay said debt.

Wherefore your petitioner prays that the said Waddy Thompson may be duly cited to appear and answer this petition, and after all due proceedings held that there be judgment in favor of your peti-
30 tioner for the said sum of six thousand dollars, with interest from March 4th, 1869, six $\frac{74}{100}$ dollars and costs of protest and costs of suit.

And for general relief.

(S'g'd) J. A. GILMORE, *Atty.*

Note.—Filed March 12, '69.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

$6,000.]

LITTLE ROCK, *January* 15, 1867.

On the first of March, 1869, after date I promise to pay to the order

of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value received.

No. 3.] (Signed) WADDY THOMPSON.

[Stamp—W. T., 6-15, 1867.]

(Endorsed:) Protested for non-payment this 4th day of March, 1869.

31 (S'g'd) GEO. W. CLARK,
Notary Public, Pulaski County, Ark.

(Endorsed:) JOHN T. FLEMING.

Protest.—Filed March 12, 1869.

CHARLES GALLAGHER *vs.* WADDY THOMPSON. } No. 407.

UNITED STATES OF AMERICA,
State of Arkansas, ss:

I, George W. Clark, notary public, duly commissioned and sworn, dwelling in the city of Little Rock, do hereby certify that on the 4th day of March, in the year of our Lord one thousand eight hundred and sixty-nine, at the request of S. H. Tucker, esq., in the city of Little Rock, the original note, a copy of which is on the reverse hereof written, was duly presented unto the Merchants' National Bank and S. H. Tucker, banker,
32 at Little Rock, during business hours, (due and diligent inquiry having previously been made to ascertain the drawer's residence or office here, and finding none,) and payment thereof was then and there demanded, which was refused; of all which I have given due notice to the parties concerned in manner following:

To Waddy Thomson, New Orleans, La., by mail this day.

Charles Gallagher, New Orleans, by mail this day.

John T. Fleming, Thompson Station, Tenn., by mail this day.

Whereupon I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the makers, drawers, acceptors, and endorsers of the said note as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred and to be hereafter incurred for want of payment of the same.

Thus done and protested in the city of Little Rock aforesaid.

In testimonium veritatis.

[SEAL.] (S'g'd) GEO. W. CLARK,
Notary Public.

33 Recorded book A, folio 250.

[Stamp.]

Copy of note on the reverse of protest.

$6,000.00.] LITTLE ROCK, ARKS., *January 15th*, 1867.

On the first of March, 1869, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value received.

No. 3.] (S'g'd) WADDY THOMPSON.

[Stamp, $3.00.]

(Endorsed:)

JOHN T. FLEMING.

Pay to the order of S. H. Tucker, esq.

CHAS. GALLAGHER.

Citation and return.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

STATE OF LOUISIANA,
Fifth District Court for the Parish
34 *of Orleans, the City of New Orleans:*

Mr. WADDY THOMPSON:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court, parish of Orleans, in ten days after service hereof.

Witness the honorable Chas. Leaumont, judge of the said court, the 12th day of March, in the year of our Lord 1869.

(S'g'd) PHILIP POWER, JR.,
D'y Clerk.

Sheriff's return to above.

Received March 12th, 1869, and on the 15th day of same month and year served *a* within copy of citation and accompanying petition on Waddy Thompson in person.

(S'g'd) JAS. BONDET,
D'y Sheriff.

Peremptory exception.—Filed March 27, '69.

CHAS. GALLAGHER
35 *vs.*
WADDY THOMPSON. } No. 407.

5th district court for the parish of Orleans.

Now comes defendant, and for peremptory exception to the petition of plaintiff pleads that the same discloses no cause of action.

Wherefore defendant prays that said petition may be dismissed with costs, and for all general and equitable relief.

(Signed) HYAMS & JONAS, *Attys.*

Exception dismissed April 17, 1869.—*Extract from minutes.*

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

On motion of T. A. Gilmore, of counsel for plaintiff, and on suggesting to the court that the exception in this case is merely taken for
36 delay, it is ordered that said exception be dismissed.

Answer, interrogatories, and order.—Filed April 20, '69.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

Fifth district court for the parish of Orleans.

To the honorable Chas. Leaumont, judge, etc.:

Now comes defendant, Waddy Thompson, and for answer to plaintiff's petition denies all and singular the allegations thereof, except as may be hereinafter admitted.

Respondent admits that he made and signed the note sued upon, which was given to one John G. Fleming as part of the purchase price of certain land in the State of Arkansas, sold by him to your respondent, as was well known to plaintiff when he acquired the same, and your respondent avers that the consideration for which the said note was given has entirely failed, and that through the fraud and mis-
37 representation of said John G. Fleming he has been deprived of the possession and ownership of the said land for which said note was given, and he has received no value whatever therefor.

Respondent avers that he has a good and sufficient defense to the said note against the said John G. Fleming, or any person holding the same for him, or who may have acquired the same after maturity or with a full knowledge of respondent's equities and defences, as before stated, and respondent avers that he has good reason to believe that plaintiff holds the said note for the account of said Fleming, who has gone into bankruptcy, or that he acquired the same for a valueless consideration and with a full knowledge of the fact that your respondent had received no consideration for the said note.

Wherefore respondent respectfully prays that plaintiff be ordered to answer the annexed interrogatories on facts and articles under oath, within the legal delays, and that after due proceedings had his petition be dismissed with costs, and for all general and equitable relief.

(S'g'd) HYAMS AND JONAS, *Attys.*

38 1st interrogatory. From whom did you acquire the note sued upon, and at what date did you become the owner of it? State what consideration you gave for the said note, and whether the same was in money. If yea, state how much money, to whom and when it was paid?

Interrogatory 2d. Is not John G. Fleming interested in the said note and its collection? Does it not belong to him in whole or in part?

Interrogatory 3d. If you acquired the said note from John G. Fleming, state whether said Fleming was not at that time a bankrupt. Had he not made his surrender in bankruptcy? If not, was he not about to do so? Did you not know that he was a bankrupt? When did he file his petition in bankruptcy?

Interrogatory 4th. Did you not know when you acquired the said note from Fleming that he had given no consideration therefor? Did you not know that said note was given for land, and that the
39 title to the same had failed? Did you not know that respondent had been deprived of the possession and ownership of said land?

(Signed) HYAMS AND JONAS, *Atty'.*

Affidavit.

Personally appeared Waddy Thompson, defendant herein, who, being sworn, says that the annexed interrogatories on facts and articles are

material, and that, in his opinion, the answers of plaintiff thereto will assist him in making his defence, and are necessary thereto.

(S'g'd) WADDY THOMPSON.

Sworn to and subscribed before me at New Orleans this 19th day of April, 1869.

(S'g'd) A. SHELLEY, 2*d*, *J. P.*

Order.

Let this answer be filed, and let the plaintiff herein, Charles
40 Gallagher, be ordered to answer under oath, within the legal delays, the interrogatories on facts and articles to him propounded.

New Orleans, April 20, 1869.

(Signed) CHAS. LEAUMONT, *Judge.*

Citation.

CHAS. GALLAGHER
vs. } No. 407.
WADDY THOMPSON.

State of Louisiana, fifth district court for the parish of Orleans, in the city of New Orleans.

Mr. CHAS. GALLAGHER, *of N. O.:*

You are hereby ordered to answer under oath, within the legal delay, the interrogatories on facts and articles.

Witness the honorable Charles Leaumont, judge of the said court, the 20th day of April, in the year of our Lord 1869.

(S'g'd) LOUIS POWER, *Clerk.*

41 *Sheriff's return to above.*

Received April 20th, 1869, and on the 21st day of the same month and year served copy of the within citation and accompanying interrogatories on facts and articles personally on Chas. Gallagher, plaintiff herein.

Ret. same day.

(S'g'd) PHI. LACOSTE,
D'y Sheriff.

Answer of plaintiff to interrogatories.—Filed April 22, 1869.

CHARLES GALLAGHER
vs. } No. 407.
WADDY THOMPSON.

5th district court for the parish of Orleans.

And now comes the plaintiff, Charles Gallagher, and, for answer to the interrogatories herein propounded to him, says:

To the 1st interrogatory: I acquired said note, and eight others of like character, except as to dates of maturity, from John T. Fleming, on the 20th day of March, 1867. The consideration I gave said Fleming
42 for the same was $24,367.64 in his own two notes, due 13th March

and 13th April, 1863, and $7,684 39/100 in cash. The money was paid to said Fleming at said date, to wit, the 20th March, 1867.

To the 2d interrogatory: No.

To the 3rd interrogatory: Fleming was not a bankrupt at the time I acquired said note, nor had he made a surrender in bankruptcy, nor was he about to do so to my knowledge. Indeed, the present United States bankrupt law was not then in operation, except for certain purposes. I did not know that he was a bankrupt, but I understood that he has recently—that is, in 1868—filed his petition in bankruptcy.

To the 4th interrogatory: I did not know at the time I acquired the note from Fleming that he, Fleming, had given no consideration for it. On the contrary, I knew from the defendant himself that the note had been given for a good consideration, to wit, for land, but I did not know that the title had failed, nor do I know it now; neither do I know that the respondent has been deprived of the possession and
43 ownership of the land.

(S'g'd) CHAS. GALLAGHER.

NEW ORLEANS, *April* 21, 1869.

Sworn and subscribed to before me to-day.

(S'g'd) A. SHELLEY, 2*d*, *J. P.*

Testimony of Jas. H. Rotchford.—Filed May 24, '69.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

James W. Rotchford, having duly sworn, says: I am well acquainted with John T. Fleming, the endorser on the note sued on. I have often seen him write and sign his name. The endorsement of said Fleming on the note sued on in this case is genuine, and is in his (the said Fleming's) own proper hand.

(Signed) JAS. W. ROTCHFORD.

Sworn to and subscribed before me this 24th May, 1869.

(S'g'd) PHILIP POWER, JR.,
D'y Clerk.

44 *Order continuance May* 24, 1869.—*Extract from minutes.*

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

This case is ordered to be continued with preference, not being reached for want of time.

Note of evidence.—Filed June 7, 1869.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

Plaintiff offers in evidence the notes and protest herein, and the testimony on file.

Judgment.—June 7, 1869.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

45 This cause came on this day for trial—T. Gilmore for plaintiff, B. F. Jonas for defendant; when, after hearing evidence, the law and evidence being in favor of plaintiff, it is ordered, adjudged, and decreed that the plaintiff, Charles Gallagher, do have and recover of defendant, Waddy Thompson, the sum of six thousand dollars, with legal interest from March 4, 1869, until paid, and costs of suit, and six $\frac{74}{100}$ dollars costs of protest.

Judgment rendered June 7th, 1869.

Signed June 11th, 1869.

(Signed) CHAS. LEAUMONT, *Judge.*

Fi. fa.—July 5th, 1865.

CHAS. GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

State of Louisiana, fifth district court, for the parish of Orleans.

46 The State of Louisiana to the sheriff of the parish of Orleans, greeting:

We command you that, by seizure and sale of the property, real and personal, rights and credits, of Waddy Thompson, in the manner prescribed by law, you cause to be made the sum of six thousand dollars, with legal interest from March 4, 1869, until paid, and six $\frac{74}{100}$ costs protest, and also the sum of eighteen dollars eighty-five cents costs, as well as your own costs and charges, to satisfy a judgment rendered against the said Waddy Thompson in our fifth district court for the parish of Orleans, on the seventh day of June, 1869, in favor of Chas. Gallagher, and how you shall have executed this writ you make return to our said court in seventy days, as the law directs.

Witness the honorable Charles Leaumont, judge of our said court, this fifth day of July, in the year of our Lord 1869.

(S'g'd) PHILIP POWER, JR.,
D'y Clerk.

47 *Sheriff's return to above fi. fa.*

None; the delay of fi. fa. having not yet expired.

Supplemental petition, interrogatories, and order.—Filed July 8th, 1869.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

To the honorable the judge of the fifth district court for the parish of Orleans:

The supplemental petition of Charles Gallagher, residing in New Orleans, respectfully represents—

That your petitioner has obtained from the clerk of this honorable court a writ of fieri facias, ordering the sheriff of this parish to seize and take into his possession the property, real and personal, rights and credits, of defendant, to satisfy a judgment rendered by this honorable court, and to cause to be made, in the manner prescribed by law, an amount sufficient to satisfy the said judgment, viz, six thousand
48 dollars, with legal interest from 4th March, 1869, and costs; and having good reasons to believe that Pike, Brother & Co., third persons, are indebted unto said defendant, or have property or effects in their possession or under their control belonging to said defendant, therefore petitioner prays that said Pike, Brother & Co. be made garnishees herein, and ordered to answer under oath the accompanying interrogatories, and, after all due and legal proceedings, condemned to pay the amount of said judgment, with interest and costs.

(S'g'd) J. A. GILMORE,
Attorney for Pet'r.

Interrogatories to be answered categorically, under oath, in writing, and within ten days from service.

1st. Had you in your hands or under your control, directly or indirectly, at the time of service of these interrogatories, or at any time since, any money, rights, credits, or other property whatsoever belonging or due to the said defendant in execution, or in which defend-
49 ant has or had any interest for the whole or for a part; and, if yea, what is the nature, description, and amount thereof; and is the same sufficient to pay or satisfy the full amount of said judgment, say $7,000; or, if less, to what amount, you being asked and required to make a full disclosure in relation to the same?

2d interrogatory. Were you not at the time of service upon you of these interrogatories, or since, directly or indirectly indebted or obligated unto the said defendant in execution for anything or for any sum whatever, whether for yourself alone or together with others, in consequence of any sale, or exchange, or transaction of any kind whatever, whether the same be due or to become due, and whether the interests of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same sufficient to pay or satisfy the full amount of said judgment, with interest and costs, or, if less, what amount, you being asked and required
50 to make a full and detailed disclosure in relation to the same?

Interrogatory 3rd. Do you not hold certain collaterals belonging to said defendant, or in which he has an interest?

Interrogatory 4th. Have you at any time, since the service of notice of seizure in your hands herein, made, directly or indirectly, unto or with the said defendant in execution, any payment or novation, or compromise or arrangement, or given him any note or other written obligation, or received from said defendant in return, directly or indirectly, any receipts or acquittance? And, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

Order.

Let this supplemental petition be filed, and let Messrs. Pike, Brother & Co. be made garnishee herein, and ordered to answer the accompanying interrogatories under oath, in writing, within ten days from service, and as the law directs, as herein prayed for.

51 New Orleans, July 8th, 1869.
(Signed) CHAS. LEAUMONT, *Judge.*

Citation.

CHAS. GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

State of Louisiana, fifth district court for the parish of Orleans, in the city of New Orleans.

Messrs. PIKE, BROTHER & Co., *Garnishees:*

You are hereby cited to declare on oath what property belonging to the defendant in this case you have in your possession, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the petition, of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans within ten days after the service hereof; otherwise judgment will be en-
52 tered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the honorable Charles Leaumont, judge of the said court, the 8th day of July, in the year of our Lord 1869.
(Signed) PHILIP POWER, JR.,
D'y Clerk.

Sheriff's return to above.

Received July 8, 1869, and on the same day, month, and year, at 4 o'clock, served a copy of the within citation, interrogatories, and accompanying petition on A. Brother, a member of the firm of Pike, Brother & Co., garnishees.
Ret. same day.
(S'g'd) F. PFISTER,
D'y Sheriff.

Answer of Pike, Brother & Co., garnishees.—Filed July 16, 1859.

CHARLES GALLAGHER
vs.
WADDY THOMPSON. } No. 407.

Answers of Pike, Brother & Co., to interrogatories propounded
53 to them in the above-entitled suit, answers being made by Alexander Brother, a member of said firm.

To 1st interrogatory he says: On or about the 23d day of March, 1869, the defendant, Waddy Thompsom, deposited with Pike, Brother & Co., as collaterals to secure them against any loss upon bills drawn by J. C. Forbes on New York, endorsed by Waddy Thompson, the following-described notes:

1°. Note James Conglin, due 4–7 January, 1869, $2,194.35.
2°. Note Rich'd F. Harrison, due 3–6 July, 1869, (protested,) $2,632.24.
3°. Note Rich'd F. Harrison, due 3–6 July, 1870, $3,062.28.

4°. Note Isaac Wood, endorsed Perry Fuller, due 7-10 May, 1869 $10,014.33.

5°. Francis H. Page, with mortgage on Brig. C. C. Colson, due 23-26 May, $15,000.00.

The above-described notes we still hold as collaterals for the purposes above stated. I will further state that suit has been instituted against Pike, Brother & Co., in the 6th district court, parish of Orleans,
54 by James W. Parker, for the three first of the above-described notes, he claiming to be entitled to the possession and ownership of said three notes. Pike, Brother & Co. have no other credits, rights, or property of any description belonging to the defendant, with the exception of $446.79 cash, received on collaterals.

To 2d interrogatory he says: No, except as above stated in answer to the first interrogatory.

To 3d interrogatory he says: This interrogatory answered fully in my answer to the 1st interrogotory.

To 4th interrogatory he answers, no.

(Signed) A. BROTHER.

Sworn to and subscribed before me at my office this fifteenth day of July, A. D. 1859.

(S'g'd) S. MAGNER,
Not. Pub.

Clerk's certificate.

State of Louisiana, fifth district court for the parish of Orleans.

55 I, Philip Power, jr., deputy clerk of the fifth district court for the parish of Orleans, and as such sworn and acting in the duly authorized absence from the State of Louis Power, clerk, do hereby certify that the foregoing (35) thirty-five pages contain a true and complete transcript of all the proceedings had, documents filed, and evidence adduced in the case wherein Charles Gallagher is plaintiff and Waddy Thompson is defendant, numbered 407, instituted in this court, and of the docket of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and in the year of the Independence of the United States the ninety-fourth.

[L. S.] PHILIP POWER, JR.,
D'y Clerk.

Certificate of judge to foregoing clerk's certificate.

State of Louisiana, fifth district court for the parish of Orleans.

56 I, Charles Leaumont, sole judge of the fifth district court for the parish of Orleans, do hereby certify that Philip Power, jr., is deputy clerk of the said court, and that the signature Philip Power, jr., to the foregoing certificate is in the proper handwriting of him, the said deputy clerk; to his official acts as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand and seal, at the city of New Orleans, on this twenty-second day of July, in the year of our Lord one thousand eight

hundred and sixty-nine, and in the 94th year of the Independence of the United States.

[L. S.] CHS. LEAUMONT,
Judge of the Fifth District Court for the Parish of Orleans.

Certificate of clerk to foregoing judge's certificate.

State of Louisiana. fifth district court for the parish of Orleans.

57 I, Philip Power, jr., deputy clerk of the fifth district court for the parish of Orleans, and as such sworn and acting in the duly authorized absence from the State of Louis Power, clerk, do hereby certify that Hon. Charles Leaumont, whose name is signed to the foregoing certificate, is the sole judge of this court; and I do further certify that said court is a court of record.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the ninety-fourth year of the Independence of the United States.

[L. S.] PHILIP POWER, JR.,
D'y Clerk.

Exhibit C to bill.

Which Exhibit C is as follows, to wit:

Sheriff. Deed to E. H. English.

STATE OF ARKANSAS,
County of Prairie:

Jacob P. Gray, as sheriff of said county, to all whom these presents shall come, greeting:

Whereas, on the 29th day of April, A. D. 1867, there was issued from the clerk of the circuit court of Prairie County, signed by the clerk and attested by the seal of said court, a certain writ of fieri facias, in the name of the State of Arkansas, to me, as such sheriff, directed, and which came to my hands on the fourth day of May, 1867, at 3 o'clock p. m. of said day, the recital' of which writ of fieri facias execution are as follows, to wit: That whereas Jordan N. Embry, on the 21st day of February, in the year of our Lord one thousand eight hundred and sixty-six, at our circuit court of Prairie County, recovered against John T. Fleming the sum of six hundred and forty-three dollars for his debt, together with the sum of sixty-three dollars damages, with interest on said debt and damages at the rate of ten per centum per annum from the said 21st day of February, A. D. 1867, until paid, besides all his costs sustained in said suit, which costs amounting to the sum of fourteen dollars & five cents; you are therefore com-
59 manded, that of the goods and chattels, lands and tenements, of the said John T. Fleming you cause to be made the debt, damages, interests, and costs aforesaid, so that you have the debt, damages, interest, and costs aforesaid before our said circuit court on the second day of our August term, A. D. 1867, and that you then and there certify how you have executed this writ. And in obedience to the commands of said writ, and in order that the same might be executed and satisfied,

I did afterwards, (to wit,) on the 14th May, 1867, in said county, *by* then and there levy*ing* upon and seiz*ing* the following-described property of said John T. Fleming, (to wit:)

The south half of the southeast quarter of section twenty, 80 acres; the north half of the northeast quarter of section thirty-two, 80 acres; the southeast quarter of section twenty-eight, 160 acres; the east half of the northeast quarter of section twenty-eight, 80 acres; the W. ½ of N. W. ¼ of section twenty-seven, 80 acres; the northeast quarter of the southwest quarter of section twenty-seven, 40 acres; the south-
60 west quarter of section twenty-one, 160 acres; the south half of the southeast quarter of sec. twenty, 80; the south half of section seventeen, 320 acres; the southeast quarter and west half, and the northwest quarter and southwest quarter of section nineteen, $306\frac{48}{100}$ acres; and the east half of the northeast quarter of section nineteen, 80 acres; and the northwest fr'l quarter, and the west half of the southwest fr'l quarter, and the north half of the north half of section twenty, and the east half of the east half of section seventeen, $411\frac{23}{100}$; the south half of the northwest quarter of section twenty, 80 acres; and the east quarter of sec. twenty-nine, 160 acres; and the northwest of the northeast quarter of section seventeen, 40 acres; and the south half of the northwest quarter of section seventeen, 80 acres; and the northwest quarter of the northwest quarter of section seventeen, 40 acres; all in township two south, of range nine west; also the west half and the north half of the south half of section fifteen, in township two south, of range eight west of the fifth principal meridian, 480 acres.

61 And whereas I, the said Jacob R. Gray, as such sheriff, offered said lands for sale to highest bidder for cash at the court-house door in the town of Brownsville, in the county of Prairie, within the legal sale-hours, on the nineteenth day of August, 1867, being the fifth day of our August of the circuit court for said county, after having advertised the same for sale in the Des Arc Citizen, a newspaper published in said county, for more than twenty days, in accordance with the statutes in that behalf made and provided, and E. H. English being the highest bidder for all of said lands offered, by separate tracts, the same were struck to him for the aggregate *of* sum of eight hundred and forty-four dollars and seventy cents, which was then and there bid and paid by him for said lands. Now, therefore, I, the said Jacob R. Gray, as such sheriff, in consideration of the premises, have granted, bargained, and sold, and do hereby grant, bargain, sell, and convey the said lands aforesaid to the said E. H. English; to have and to hold the lands
62 aforesaid, with the appurtenances thereto attached and belonging, with the said E. H. English, his heirs and assigns, forever—that is to say, all the right, title, and interest which the said John T. Fleming had in and to said lands at the date of the judgment above recited, or at any time the*ir* and day of *sold* sale, and I do covenant with the said E. H. English that all my acts in the premises as such sheriff have been legal, and in accordance with law.

In testimony whereof I, the said Jacob R. Gray, have hereto subscribed my name and affixed my seal this 24th day of August, 1867.

J. R. GRAY. [SEAL.]
Sheriff of Prairie County, Arkansas.

STATE OF ARKANSAS,
County of Prairie:

Be it remembered that on this 24th day of August, 1867, before me, Wm. Goodwin, clerk of the circuit court within and for the county of

Prairie, in the State of Arkansas, personally appeared J. R. Gray,
63 sheriff of the county *of* aforesaid, to me personally well known to be the person whose name appears to the annexed and foregoing deed, and stated that he had executed the same for the consideration and purposes therein mention' and set forth. And I do hereby so certify.

In testimony whereof I hereunto set my hand, and affix*ed* the seal of my of' the day and year last aforesaid.

[L. S.] WM. GOODWIN, *Clerk.*

STATE OF ARKANSAS,
County of Prairie :

I, Wm. Goodwin, clerk of the circuit court, and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 7th day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and the same is now duly recorded in record-book R, page 252.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of said county this 13 day of December, A. D. 1867.

[L. S.] WM. GOODWIN,
Clerk and Ex-Officio Recorder.

64 STATE OF ARKANSAS,
County of Prairie :

I, Stephen Bilheimer, county clerk and ex-officio recorder in and for the county of Prairie, in the State of Arkansas, do hereby certify that the foregoing is a true and correct transcript of deed from sheriff of Prairie County to E. H. English, as the same appears of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of my office, this 2nd day of February, A. D. 1870.

[L. S.] S. BILHEIMER, *Clerk.*

And on the same day a writ of subpœna was issued, which is as follows:

Subpœna.

UNITED STATES OF AMERICA,
Eastern District of Arkansas :

The President of the United States to Wad'y Thompson and Robert H. Ober, who are citizens of the State' Arkansas and Tennessee, defendants herein, greeting:

65 We command and strictly enjoin upon you that, laying all other matters aside, and notwithstanding any excuse, you, and each of you, be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the seventh day of March, A. D. 1870, it being the first Monday of March next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by Charles Gallagher, and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit under penalty of what the law directs.

In testimony whereof, Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, has cause' the seal of said circuit court to be hereunto affixed, this third day of Feb'y, A. D. 1870, and in the ninety-fourth year of our Independence.

Attest :

[L. S.] CHAS. P. REDMOND, *Clerk.*

N. B.—The defendants are required to enter their appearance
66 in the above cause in the clerk's office of this court, on or before the 7th day of March, 1870, or the bill will be taken pro confesso against.

CHAS. P. REDMOND, *Clerk.*

Return on subpœna.

(Endorsed :) I have served the within subpœna on the within-named Waddy Thompson, by reading the same to him Thursday eve, 5 o'clock, February 3d, 1870, and further by delivering to him a true copy of the same. And I have served the within subpœna upon the within-named Robert H. Ober, by reading the same to him, and further by delivering to him a true copy of the same at Little Rock, Ark., in the eastern district of Arkansas, on this 4th day of February, A. D. 1870.

ISAAC C. MILLS,
U. S. Marshal for East. Dist. Ark.

Returned and filed Feb'y 4, 1870.

CHAS. P. REDMOND, *Clerk.*

Be it remembered that at a circuit court of the United States in and for the eastern district of Arkansas, begun and holden on Monday,
67 the 11th day of October, anno Domini eighteen hundred and sixty-nine, at the United States court-room in the city of Little Rock, Arkansas—the Hon. Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had on February 15th, 1870, to wit :

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes said complainant, by Watkins and Rose, his solicitors, and files herein Exhibits D and E to bill, and, on motion, leave is granted him to amend his bill, which is thereupon done.

Exhibit D to bill.

Which Exhibit D is as follow', to wit :

E. H. English & wife, deed to Robert H. Ober.

[Revenue-stamp, $27.]

This of indenture, made and entered into on this the 29th day of February, A. D. 1868, by and between Elbert H. English and wife,

Julia A. English, of the county of Pulaski, in the State of Arkansas,
68 of the first part, and Robert H. Ober, of the city of New York, of the second part, witnesseth, that for and in consideration of the sum of twenty-seven thousand dollars in hand paid to the parties of the first part by the said party of the second part, the parties of the first part have granted, bargained, sold, and quit-claimed, and do hereby grant, bargain, sell, quit-claim, and convey unto the party of the second part the following described lands, situated in the county of Prairie, in the State of Arkansas, to wit: "The south half of the southeast quarter of section twenty-nine, 80 acres. The north half of the northeast of section thirty-two, 80 acres. The southeast quarter of section twenty-eight, 160 acres. The east half of the northeast quarter of section twenty-eight, 80 acres. The west half of the northwest quarter of section twenty-seven, 80 acres. The northeast quarter of the southwest quarter of section twenty-seven, 40 acres. The southwest quarter of section twenty-one, 160 acres. The south half of the southeast quarter of section twenty, 80 acres. The south half of section seventeen, 320 acres. The east half of section eighteen, 320 acres. The south-
69 east quarter and west *west* half and the northeast fr'l quarter and the northwest quarter and southwest quarter of section nineteen, 306.38 acres; and the east half of the northeast quarter of section nineteen, 80 acres; and the northwest fract'l quarter and the west half of the southwest fract'l quarter and the north half of the south half of section twenty, and the east half of the east half of section seventeen, 411.23 acres; and the south half of the northwest quarter of section twenty, 80 acres; and the northeast quarter of section twenty-nine, 160 acres; and the northwest of the northeast quarter of section seventeen, 40 acres; and the south half of the northwest quarter of seventeen, 80 acres; and the northwest quarter of the northwest quarter of section seventeen, 40 acres, are in township two south, of range west; also the west half and the north of the south half of section fifteen, in township two south, of range eight west, of the fifth principal meridian, 480 acres;" being the same lands conveyed to the said Elbert H. English by Jacob R. Gray, sheriff of Prairie County, Arkansas, by
70 and bearing date 24th day of April, 1867, duly acknowledged and recorded in the office of the recorder of said county.

To have and to hold the said hands, with the appurtenances as thereto attached and belonging, unto the said party of the second part, his heirs and assigns forever.

And the said Julia A. English, on her part, does hereby freely relinquish all her right of dower in said lands, and the said Elbert H. English hereby conveys unto the said party of the second part all the right, title, interest, and claim in and to said lands which he acquired by the deed of the said Jacob R. Gray, sheriff, as aforesaid, and none other, covenanting that he has not incumbered said lands since they were so conveyed to him, the said Elber' H. English.

In testimony whereof the said parties of the first part have hereunto subscribed their names and affixed their seals this the day and year first above written.

E. H. ENGLISH. [SEAL.]
J. A. ENGLISH. [SEAL.]

71 STATE OF ARKANSAS,
County of Prairie:

Personally appeared before the undersigned, Peyton D. English, a notary public, duly commissioned and acting in and for said county, Elbert H. English, whose name is subscribed to the foregoing deed of

conveyance, and who is to me personally well known, and acknowledged that he had executed the same for the purposes and considerations therein contained, set forth, and expressed, and also voluntarily appeared the said Julia A. English, wife to said Elbert H. English, whose name is also subscribed to the foregoing deed of conveyance, and in the absence of her said husband, (she being personally known to me,) declared that she had of her own free will signed and sealed the relinquishment of dower contained in said deed, for the purposes contained and set forth therein, without compulsion or undue influence of her said husband.

In testimony whereof I, the said Peyton D. English, as such
72 notary public, have hereunto subscribed my name and affixed my seal of office, at Little Rock, in said county and State, this 29th of February, A. D. 1868.

PEYTON D. ENGLISH,
Notary Public, Pulaski County, Arkansas.

STATE OF ARKANSAS,
County of Prairie :

I, Wm. Goodwin, clerk of the circuit court and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 6th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and the same is now duly recorded in record-book R, page 423.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of said county, this 6th day of March, A. D. 1868.

[L. S.]

WM. GOODWIN,
Clerk and ex-officio Recorder.

73 STATE OF ARKANSAS,
County of Prairie :

I, S. Belheimer, county clerk and ex-officio recorder in and for the county of Prairie, and State of Arkansas, do hereby certify that the foregoing is a true and correct transcript of deed from English to Ober, as the same appears of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of my office this 9th day of February, A. D. 1870.

[L. S.] S. BELHEIMER, *Clerk.*

Exhibit E to bill.

Which Exhibit E is as follows, to wit :

Waddy Thompson & wife, deed to Robert H. Ober.

[Revenue stamp, 2.50.]

This deed of conveyance, made and entered into on this 29th day of February, A. D. 1868, by and between Waddy Thompson and wife, Elizabeth Thompson, of the city of Memphis, in the State of Tennessee, of the first part, and Robert H. Ober, of the city of New
74 York, of the second part, witnesseth : That the said parties of the first part, for and in consideration of the sum of five thousand dollars, to the parties of the first part by the party of the second part in hand paid, the receipt whereof is hereby acknowledged, the parties of the second part have granted, bargained, and sold, and do hereby grant, bar-

gain, and sell, and convey, unto the said party of the second part, the following lands, situated in the county of Pulaski, in the State of Arkansas, the east of the southeast quarter and the east half of the northeast quarter of section twenty-four, in township two south, in range ten west, 160 acres; the northwest quarter of the southeast quarter of section twenty-four, same township and range, 40 acres; the southwest quarter of the southeast quarter of section twenty-four, same township and range, 40 acres; the northeast quarter of the northwest quarter of section twenty-four, same township, 40 acres; the northwest quarter of the northeast quarter of section twenty-four, same township and range, 40 acres; 75 the southwest quarter of section twenty-four, and the northwest quarter of section twenty-five, same township and range, 320 acres. Also the following-described tract or parcel of land, to wit: commencing on the east bank of Clear Lake, at the corner between sections eighteen and nineteen, in township two south, in range nine west, and running northeast to the half-mile line of section eighteen, so as to embrace five acres, more or less, of the southeast of the west of said section eighteen; also that part of section eighteen west of Clear Lake, and that part of section thirteen, in township two south, in range ten west, lying and situate west of Clear Lake, in the county of Pulaski, containing five acres, more or less; also the southeast quarter of the northwest quarter of section twenty-four, in township two south, in range ten west, forty acres; also all other lands embraced in the deed of conveyance from John T. Fleming and wife to Waddy Thompson, dated 15th day of January, 1867, which are not embraced by the deed from Jacob R. Gray, sheriff of Prairie County, to E. H. English, dated 24th day of August, 1867, 76 and in the deed from said E. H. English & wife to said Robert H. Ober, dated 29th day of January, A. D. 1868.

To have and to hold the lands above described, with the appurtenances thereto attached and belonging, unto the said party of the second part, his heirs and assigns, forever; and the parties of the first part do and will, for themselves, their heirs and assigns, warrant and defend the title to the same unto the said party of the second part against the lawful claims and incumbrances of all persons whatsoever; and the said Elizabeth Thompson, wife of the said Waddy Thompson, doth on her part freely relinquish all right of dower in and to said lands.

In testimony whereof the parties of the first part have hereunto subscribed their names and affixed their seals, the day and year first above written.

WADDY THOMPSON. [SEAL.]
ELIZABETH THOMPSON. [SEAL.]

77 STATE OF ARKANSAS,
County of Pulaski:

On this day personally appeared before me, Peyton D. English, a duly-commissioned and acting notary public in and for said county, Waddy Thompson, whose name is subscribed to the foregoing deed of conveyance, and who is to me personally known, and acknowledged that he had executed the same for the purposes and considerations therein set forth, contained, and expressed.

In testimony whereof I, the said Peyton D. English, as said notary public, have hereto subscribed my name and affixed my official seal, at office in Little Rock, county and State aforesaid, this 29th day of February, 1868.

PEYTON D. ENGLISH,
Notary Public, Pulaski County, Arks.

STATE OF TENNESSEE,
City of Memphis:

78 On this day personally and voluntarily appeared before me, the undersigned, a commissioner of deeds, &c., for the State Arkansas, duly commissioned and acting as such, Elizabeth Thompson, wife of Waddy Thompson, whose name is subscribed to the foregoing deed of conveyance, and who is to me personally known, and, in the absence of her said husband, declared that she had signed and sealed the relinquishment of dower therein expressed, for the purposes therein contained and set forth, without compulsion or undue influence of said husband.

In testimony whereof I have hereunto set my hand and seal of office, in the city of Memphis, Tennessee, this 6th day of March, A. D. eighteen hundred and sixty-eight.

CHARLES A. CHOOTE,
Com'r of Deeds for Arkansas, at Memphis.

STATE OF ARKANSAS,
County of Pulaski:

I, Thomas H. Walker, clerk of the circuit court and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and
79 foregoing of writing was filed for record in my office on the 11th day of March, A. D. 1868, and the same is now duly recorded in record-book J, No. 2, page 50.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, on this 13th day of March, 1868.

THOS. H. WALKER,
Clerk and Ex-officio Recorder.

STATE OF ARKANSAS,
County of Pulaski:

I, Wm. Goodwin, clerk of the circuit court and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 8th day of May, 1868, and the same is now duly recorded in record-book R, page 607 & 608.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, on this 9th day of May, A. D. 1868.

[L. S.] WM. GOODWIN,
Clerk and Ex-officio Recorder.

80 STATE OF ARKANSAS,
County of Prairie:

I, S. Belheimer, county clerk and ex-officio recorder in and for the county of Prairie, in the State of Arkansas, do hereby certify the foregoing is a true and correct transcript of deed from Thompson to Ober, as the same appears of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of my office, this 9th day of February, A. D. 1870.

[L. S.] S. BILHEIMER, *Clerk.*

Record entry.

Before the judge, at rules, March 7th, 1870, as follows, to wit:

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now come said defendants, by Garland and Nash, and enter their

appearance to this action, nunc pro tunc, for the first day of the next April term.

81 Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 11th day of April, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now comes said complainant, by Watkins and Rose, his solicitors, and on his motion it is ordered, that he have leave to amend his bill of complaint in this cause by interlineation.

Record entry.

And on April 12th, 1870, as follows, to wit:

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

82 Come said defendants, by Garland and Nash, their solicitors and file herein their demurrer to the bill of complaint in this cause.

Which demurrer is as follows, to wit:

Demurrer.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, show that said complainant has not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against these defendants, or either of them, and they demur to said bill, and for a special cause they show—

1st. Said bill shows that said Thompson is a non-resident of said district, & not within the jurisdiction of this court.

2d. Said complainant, as the assignee of the note named in said bill, did not take any lien, nor has he any under and by virtue of the assignment of said note.

3d. Said bill fails to show that John T. Fleming, the original
83 holder & payee of said note, could have brought suit thereon in this court.

4th. Said bill fails to show that complainant has exhausted his remedies at law to collect the debt named in said bill.

5th. The judgment exhibited with said bill rendered in the State of Louisiana merged the note named in the bill, and this court has no juris-

diction to enforce such judgment as a lien against the lands described in the bill, or to enforce it all until a judgment is rendered on the same in this court at law.

6th. Said complainant having elected to sue said Thompson at law, he must abide such election, or show that he has used all remedy under such suit, but to no purpose, which said bill does not show.

Wherefore these defendants demand the judgment of the court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with their costs in this behalf sustained.

GARLAND & NASH,
Sols. for Defendants.

With whom are ENGLISH, GANTT & ENGLISH.

84 In my opinion the above demurrer is well founded in law.
March 30th, 1870.

A. H. GARLAND,
Counsel, &c.

Record entry.

And on May 17th, anno Domini 1870, as follows:

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now comes said complainant, by Watkins and Rose, his solicitors, and come said defendants, by Garland and Nash, their solicitors, and the demurrer to the bill in this cause heretofore filed is heard, argued, and submitted to the court, and the court not being fully advised in the premises, takes time to consider of its judgment herein.

Record entry.

And on May 19th, anno Domini 1870, as follows:

CHARLES GALLAGHER
vs.
85 WADDY THOMPSON AND ROBERT H. OBER.

And now the court, being sufficiently advised of the matters arising on the demurrer to the bill heretofore submitted, considers and adjudges that said demurrer be overruled; and, on motion of Garland and Nash, solicitors for defendants, and by consent of Watkins and Rose, solicitors for complainant, time is granted to said defendants until the first Monday in July next to answer the bill in this cause.

Record entry.

Before the clerk, at rules, June 15th, anno Domini 1870, as follows, to wit:

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now comes the defendant, Waddy Thompson, by Garland and

Nash, his solicitors, and files herein his election to stand on his demurrer heretofore filed by him.

Election.

Which election is as follows:

Comes the said Waddy Thompson, and states that he will rest
86 upon his demurrer heretofore filed in this cause, & will make no other or further defence in said cause.

GARLAND & NASH,
For Thompson.

Record entry.

And in June 14th, 1870, as follows:

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes the defendant, Robert H. Ober, by Garland and Nash, his solicitors, and files herein his separate answer to bill of complaint and Exhibit X thereto.

Answer.

Which answer is as follows:

This defendant, saving all benefit of exception to the errors, insufficiencies, and uncertainties contained in said bill, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer, he says: He admits the sale on the 15th day of January, A. D. 1867, by John T. Fleming and his wife to said Waddy Thompson, of the lands named in said bill, upon the terms & conditions as there-
87 in charged. The lands conveyed are correctly described in said bill.

A deed was made by said Fleming and wife, & the same was recorded in the counties of Prairie and Pulaski, as charged, and Exhibit A to said bill is a true copy of the original deed from said Fleming & wife, as averred in said bill.

He admits, further, that said Fleming & wife, by the terms of said deed, retained a lien on said lands for the payment of the promissory notes named in such deed, but he insists that this was no higher or better security than said parties had & held without such reservation, and that such lien already existed, and the language used in said deed, retaining a lien, did not give said Fleming & wife the right to assign or transfer the same, and he denies in law all right of said complainant to enforce such lien by virtue of his holding any or either of said notes as assignee.

Defendant, for further answer, would state that said deed from Fleming & wife calls for, in all, four thousand acres of land, but upon examination of the numbers of said lands, and a comparason thereof
88 with the map or plat, there are only three thousand five hundred and thirty-seven & $\frac{63}{100}$ acres, ($3,537\frac{63}{100}$,) leaving a deficit of four hundred and sixty-two acres & $\frac{37}{100}$ acres; and he avers, from information which he believes to be true, that said Fleming stipulated from the beginning to sell & convey no less than 4,000 acres of land to said Thompson, and as evidences of such fact, he states that by an agreement entered into by said Fleming and said Thompson, on the 11th day

of December, A. D. 1866, said Fleming bound himself to convey by warranty deed, with relinquishment of dower, that number of acres, making & constituting the "Fleming plantation," which said agreement is herewith filed, marked Exhibit X 1, & made part of this answer; and he states further that in drawing the original deed (Exhibit A to said bill) a blank was left for the describing of said $462\frac{37}{100}$ acres, but said Fleming & wife signed and delivered said deed without filling up said blank; and so defendant avers that as to so much of said land, $462\frac{37}{100}$ acres, there
89 is a total failure of consideration, the same never having been conveyed at all, and he insists to this extent there should be an abatement in the amount (if any should be decreed to complainant) to be recovered in this suit.

And for further answer this defendant states that, as to several portions of said lands, said Fleming has no other or better title than were swamp-land certificates, and this defendant is informed, & he believes it to be true, that some of said swamp-lands certificates are for lands that have never been confirmed as swamp-lands, and, as far as the defendant has been able to ascertain the lands to which the said Fleming has or had no title, they are as follows, viz:

S. W. ¼	section	21,	T.	2	S.,	R.	9 west	160 acres.
S. ½ S. E. ¼	"	20	"	"	"	"		80 "
E. ½ N. E. ¼	"	19	"	"	"	"		80 "
W. ½ S. E. ¼	"	18	"	"	"	"		80 "
N. W. of S. E.	"	24	"	"	10	"		40 "
S. W. " S. E.	"	"	"	"	"	"		40 "
N. E. " N. W.	"	"	"	"	"	"		40 "
N. W. " N. E.	"	"	"	"	"	"		40 "
S. W. " N. E.	"	"	"	"	"	"		40 "
S. ½ " N. W.	"	"	"	"	"	"		80 "
Making in the aggregate								680 acres.

90 And defendant claims and insists that, before any decree should be rendered in favor of complainant, he should cause a title, good in form & substance, to be produced; and he asks that said complainant be directed to do this, & if necessary to make out a full & complete chain of title in & to said lands, it be referred to some competent person, as especial master, to make out & present a true & correct map or plat of said lands, with a statement of the title to such & all of said parcels of lands, with a reference to the records or deeds and muniments by which the title thereto is made out.

For further answer the defendant says he has been informed, and he believes such information to be true, that said deed from Fleming & wife was prepared by Elbert H. English, esq., who is now, & was at the time said deed was executed, a practicing lawyer at Little Rock, Arkansas, and he has also been informed, & he believes correctly, that said English
91 was at the time said deed was made, & has been since then, the general attorney and legal adviser of the said Thompson, in the State of Arkansas, and during that time attended to any litigation in which said Thompson was interested in any of the courts in which said English practiced.

This defendant does not know whether said complainant became the owner of the note for $6,000.00, dated January 15th, 1867, & due & payable on the first of March, 1869, on the 20th day of March, 1867, as charged in said bill, as the endorsement on said note exhibited with the bill is in blank & without date, and he cannot admit or deny this

allegation, but, if deemed material in this suit, he calls for proof thereof.

He does not know whether said Fleming was a citizen of the State of Tennessee at the time of the assignment of said note, but if it be true that said assignment was made on the 20th day of March, 1867, as charged in said bill, this defendant, from information which he believes to be true, says the said Fleming was not a citizen then of the State of Tennessee, but was a citizen of the State of Arkansas.

92 The defendant does not know whether complainant became the owner of said note in due course of trade or not, but his information is, & believes that information to be true, he did not so become the owner of said note, but that he obtained it without consideration at all, and by a scheme between him & the said Fleming, to annoy and defraud said Thompson in respect of the lands aforesaid, and he, this defendant, calls for proof of the fact that complainant became the owner of said note in due course of trade.

Defendant admits the bringing of suit by complainant in New Orleans, and obtaining judgment on said note, as alleged in said bill, and that Exhibit B to the bill is a true copy of the record, proceedings, and judgment as stated, and that said judgment is unreversed, but is in full force as when rendered.

Answering further, this defendant admits the recovery by Jordan N. Embry, on the 21st day of February, 1866, against said Fleming, the issuing of execution thereon, and the levy of such execution upon the lands named, all as charged in said bill; and he admits, further, that

93 under such levy said lands were sold by the sheriff of Prairie County, at the court-house door of said county, on the 19th day of August, A. D. 1867, at public sale had in all things according to law; but he denies that said Elbert H. English made any announcement, publicly or otherwise, that he would buy in said lands for said Thompson, and that the money paid for them (said lands) would be a credit on the outstanding notes held by said Fleming or his assignee, as charged in said bill; but from information which this defendant believes to be true, he says said English made no announcement whatever about the lands or the sale thereof, but bid at such sale as any other person might, and did nothing to stifle or prevent bidding at such sale; and that said sale was in every respect fairly & legally conducted & completed, & no one was induced, directly or indirectly, by the said English or any other person, to refrain from bidding at such sale.

Said English did buy in said lands at such sale for the sum of $844.70, as he had the right to do, and, as this defendant is informed & believes,

94 said English bought them for himself & not for the said Thompson or any one else, and he was not in that matter then, or at any other time after, the attorney for said Fleming, he was not concerned in the suit of Embry against said Fleming, & knew nothing of such judgment, execution, or levy, until a very short time, on the same day of the sale; before said sale he ascertained these lands were to be sold, with others, by the sheriff of said county, that day being a day of the Prairie circuit court, at which said English was attending, as he had done years before that time.

This defendant, for further answer, says it is not true, as charged in said bill, that a greater part of said lands sold by the sheriff of Prairie, as aforesaid, were in a high state of cultivation; but he avers the truth to be there were not more than 640 acres in cultivation at all, & that in a very poor or ordinary state; and said lands were not then worth forty thousand dollars, or anything like that sum.

Defendant denies that, at the time of rendering said judgment against Fleming in favor of said Embry, *that* the said English was the
95 attorney of said Fleming, either to attend to his business generally, or in that particular case; and he denies that said Fleming had paid said English any fee or fees in said case.

Said defendant, for further answer, states and charges that Exhibit C to said bill is a true & correct copy of the deed from the sheriff of Prairie County to said English, as aforesaid, and the original is in possession of this defendant, to be produced whenever required by the court, & subject to the inspection of parties at all times; and the defendant avers that said deed vested all the right & title of said Fleming in & to said lands in the said English; and the sale aforesaid being had on a judgment against said Fleming, in Prairie County, long before he sold to the said Thompson, the right of said English is prior in time and paramount in law to any pretended lien as against said lands, either by the said Fleming or any assignee of his; and the defendant pleads this in bar of any relief sought here as against the said lands in Prairie County, and asks the same benefit thereof
96 as if the same had been interposed by plea in due form.

This defendant denies most positively that there was any combination on his part with any one to render ineffectual any lien of the said Fleming, or his assignee, on any of said lands; and he also denies that, so far as this defendant knew or was informed, said Thompson had then become insolvent as charged in the bill; but, on the contrary, this defendant then & for a long time thereafter believed him to be solvent, & not only solvent, but a man of large means over & above his debts.

From information which this defendant believes to be true, he denies that said English ever agreed to or said he would hold the title to said lands nominally for himself, but really for said Thompson, as stated in the bill; but, on the contrary, as this defendant is informed, & he believes truly, that said English, on all occasions when the subject was named, stated he held these lands for himself, and he refused to let them be redeemed or bought for said Thompson in any manner
97 whatever; and he denies that said English bought in said lands either as the attorney or the friend of said Thompson.

And he denies that he paid any premium or douceur to the said English or any one else, and if any such was contributed this defendant is entirely ignorant of it.

It is untrue, as charged in said bill, that said English was the legal adviser of this defendant, or that he advised him to purchase said lands, but, as will be more fully hereinafter explained, said English, before this defendant purchased said lands, (said English,) advised him of his own purchase of such lands, & stated that his purchase was in good faith & for himself, & his title under such purchase he believed to be good.

This defendant did purchase the lands sold under the Embry judgment from the said English, but not nominally as charged in said bill, but in good faith & for his own use, & for a good & valuable consideration.

98 It is true said English gave this defendant only a quit-claim deed to said lands, but the same is sufficient to convey all the right & title of said English in & to said lands to this defendant, and this is sufficient, as this defendant believes; but it is wholly untrue, as charged in the bill, that defendant paid said English but little, if any, more than the amount paid by him, the said English, therefore.

Said English never was in actual possession of said lands himself, but after his purchase, as aforesaid, he placed one Bocock in the possession thereof, for the year 1868, if he would keep the place in repair & pay the taxes thereon; and said Bocock so held the place under such arrangement, which was not reduced to writing, and it is not true, as charged, that said Thompson held possession of such lands.

Said English did make his deed, on the 29th day of February, 1868, for said lands to this defendant, & the same is correctly set forth in said bill as Exhibit D. The original is in the possession of this
99 defendant, & will be produced when required. The same is held subject to the inspection of parties at all times.

It is not true, as charged in said bill, that the said English did not receive above one thousand dollars on such sale; and it is not true that the residue of the money was paid or secured to the said Thompson; and it is untrue that said English was paid whatever money he received by the said Thompson.

Said Thompson did convey by his deed, in due form, the said lands in Pulaski County on the 29th day of February, 1868, for a real & not nominal consideration of five thousand dollars, ($5,000.00,) and said sum was all said lands were worth. Said deed is correctly set forth in Exhibit E to said bill, the original being in possession of this defendant subject to the order of the court & inspection of parties.

This defendant went into possession of said lands under his purchase from said English & from said Thompson, & is now in possession
100 thereof, & has been from that time. The time he went into possession is stated in response to the 7th interrogatory.

This defendant denies that he fraudulently procured the said English to make the said conveyance, and he denies that he well knew that the said purchase was made in order or with the view to strengthen and protect the title Thompson had acquired by his purchase from Fleming, but avers said purchase was made in good faith, and with no view in regard to the interest of said Thompson; and he denies that said English held whatever title he had acquired as trustee for said Thompson, but he held it for himself & for his own use & benefit; and he denies that he paid no money for said lands, and that he took said lands in payment of antecedent debts, as charged in said bill.

Defendant most positively denies that he purchased said lands or that they were sold to him in trust, secret, or otherwise, for the use of said Thompson, but he bought them for his own use & benefit, and he now claims them & insists they belong to him absolutely; and he
101 denies most positively that he made such purchase with any view to hinder, delay, and defraud the creditors of said Thompson, either said complainant, or any one else, for at the time of such purchase he did not know that said complainant was a creditor of said Thompson or had either of said notes.

He is informed & believes it to be true that said Fleming is insolvent & has availed of the benefit of the bankrupt act, but this defendant did not know at the time of said purchase by him that said Fleming was insolvent, if indeed he was at that time; and, as before stated, he believed said Thompson, after the payment of his debts, had large means until a very short time before he purchased as aforesaid, and this he believed from report & from the statements of said Thompson frequently made to this defendant long before such purchase and long before this defendant ever thought of making such purchase.

102 For answer to the first (1st) interrogatory propounded by complainant this defendant says: That at the date of his purchase from

the said English, the said Waddy Thompson was indebted to him, on account of money loaned and advanced to him for nearly or about one year previous to that time, in a sum amounting quite or nearly to thirty thousand dollars, ($30,000.00,) which sum the said Thompson had repeatedly assured this defendant was more than secured by claims in his favor against or other parties, in the hands of said English to be collected, and that said claims amounted to at least fifty thousand dollars, ($50,000.00;) and to satisfy himself, this defendant, then being in the city of New York, wrote to the said English, requesting him to inform him of such claims & whether they were good, and to hold the same for his (defendant's) use; and the said English replied that he held such claims & they were available & more than sufficient to secure this defendant, & that he would hold the same to apply to his debt against said Thompson; and upon this assurance this defendant rested
103 satisfied until just a short time before he made such purchase, in trying to settle with said Thompson he failed, and went to the city of Memphis to meet said Thompson, and there for the first time learned that said Thompson was insolvent & that he would likely lose his debt, and also that said lands were not his, but that they belonged to said English, the said Thompson having frequently before that time offered to sell said lands to defendant to pay his said indebtedness, and representing to defendant all the time until they met at Memphis that the lands were his & he could make title to them. Finding at Memphis defendant could do nothing towards settling his claim against Thompson, he concluded to visit said English & ascertain how much, if anything, he could realize out of the claims he held for collection in favor of Thompson, and much to his surprise, when he met said English, he learned from him that the claims which before that time he thought were worth $50,000.00 would not then bring one cent to pay his debt, but were utterly worthless. This defendant then asked said English
104 if said Thompson owned the lands aforesaid, & said English replied that he did not own the lands in Prairie County, but that he, said English, owned them, & he considered his title good, & he was under no kind of obligation to let Thompson have them, & that he had declined to do so, & would still refuse to let him have them; thereupon this defendant asked said English if he would not, under all the circumstances, sell him the lands aforesaid; & to this said English replied that, as this defendant had relied upon his statements as to the value of claims he held belonging to said Thompson, and was now to lose everything if he did not get the lands, he would sell them to him if he would pay him, said English, what he had paid for them, & other sums by way of fees that Thompson owed him, which together amounted to about two thousand dollars, ($2,000.00,) and this defendant at once agreed to this, & negotiated a bill to the bank at Little Rock through said Thompson for that sum ($2,000.00,) as this defendant was a stranger at Little Rock, and after he returned to New York he paid back to said Thomp-
105 son that sum, $2,000.00. On paying that amount to said English he made the deed aforesaid (Exhibit D to the bill) to this defendant, and he had the consideration of $27,000.00 inserted therein, because he desired to raise some money upon the lands, & he believed, as he does now, that sum was not too much for them, and he had lost fully that much by the said Thompson in his transactions with him; and he avers but for the fact of said English representing to him that his debt against Thompson was secure he never could have got said lands from him for anything less than their full value in money; but he made such purchase for no benefit of said Thompson, but for his own, & with no

view of shielding or protecting said Thompson, but in good faith, and as he conceives without fraud in law or in fact.

And on making such purchase of said English he then bought of said Thompson the lands in Pulaski County, as appears by deed of date February 27th, 1868, Exhibit E to the bill, and he allowed said Thompson a credit of $5,000.00 for them, & that was full value therefor; and
106 said Thompson then had the undisputed right to sell said lands, as he had paid up his first note to said Fleming for $6,000.00 due 1st March, 1867, the same having been paid on the 19th day of January, 1867, as will appear by said note, endorsed by said Fleming, herewith filed & marked Exhibit X 2, & made part hereof; and there being no lien on the lands in Prairie County on account of the sale to said English, this note, paid as aforesaid, was as much, if not more, than the said lands in Pulaski County were bound for, especially in view of the failure in both title & quality, hereinbefore specifically pleaded; and so defendant avers his said purchases from English & Thompson were made in good faith & for value; and by virtue thereof his title to said lands is complete in law & equity, & he pleads the same in bar of any recovery by complainant herein.

To the second (2d) interrogatory propounded he answers that, from information which this defendant believes true, said English was the attorney of said Thompson, as hereinbefore stated. Said English was not the legal adviser of this defendant further than he held the
107 claims of said Thompson to pay defendant's debt as before stated; and he has been informed, & he believes it to be true, that said English was not the attorney of said Fleming further then in preparing the deed from him & wife to said Thompson, which he did for each & both said Thompson & said Fleming.

To the third (3d) interrogatory he answers he was never, before said conveyances, informed by said English that he had made the purchase at execution-sale for the use & benefit of said Thompson, & he, said English, never informed defendant that he had so publicly announced; but, on the contrary, said English informed this defendant he had made such purchase for himself, & he would not let Thompson have the lands, as he informed this defendant he bought said lands not for & on account of Thompson, but on his own account, & without any consultation with Thompson, or any regard to him whatever.

The fourth (4th) interrogatory has been fully answered in this defendant's response to the first, (1st.)

108 The fifth (5th) has been answered in defendant's response to the first, (1st,) except that he says there was no agreement at all between said Ober, Thompson, & English as to said lands; but said Ober & English alone contracted in reference to the lands in Prairie County, & said Ober & Thompson contracted alone as to the lands in Pulaski County.

The sixth (6th) interrogatory has been already answered in the response to the first, (1st,) unless as to agreements in writing, & as to this defendant says there were no agreements or contracts in writing other than is evidenced in & by Exhibits D & E to said bill.

To the seventh (7th) interrogatory defendant answers he is in possession of said lands. He obtained possession of the Prairie lands from said English after the time of his purchase, 27th February, 1868, and he obtained possession of the Pulaski lands at the same time from said Thompson. He went into the possession of the Prairie County lands at the end of the year 1868, after said Bocock's lease from said English expired.

109 To the eighth (8th) interrogatory defendant answers: He knows nothing more of the said English's possession of said lands than he has heretofore stated.

To the ninth (9th) interrogatory defendant answers: Said Thompson did owe said Ober thirty thousand ($30,000.00) dollars at the time said purchases were made, and the same was evidenced by various notes, bills, drafts, &c., which defendant will produce, if required; and he states five thousand dollars ($5,000.00) of such indebtedness entered into the purchase of the Pulaski lands, & none into the purchase of the Prairie lands.

To the tenth (10th) interrogatory defendant has already well & sufficiently answered.

Defendant says complainant has not, in and by his said bill, made or stated such a case as entitles him to the relief therein & thereby sought, and he demurs thereto, and prays the same benefit of such demurrer on the hearing as it it had been interposed in due form.

110 And he denies all fraud and unlawful combination with which he is charged in said bill; and, having fully answered all the matters & things therein contained, without this, &c., &c., &c., he prays to be dismissed, with his costs.

ROBERT H. OBER, *Deft.*

GARLAND & NASH, *Sols.*

EASTERN DISTRICT OF ARKS.:

I, Robert H. Ober, above named, do solemnly swear the matters & things contained in the foregoing answer are true, when stated on my own knowledge, and when on the information of others, I believe them to be true, so help me God.

R. H. OBER.

Sworn to & subscribed before me, clerk of said circuit court, June 13th, A. D. 1870.

CHAS. P. REDMOND, *Clerk*,
Per R. L. GOODRICH, *D. C.*

111 *Exhibit X1 to answer.*

Which Exhibit X1 is as follows:

Agreement for sale of lands made and entered into this 11th day of December, 1866, by and between John P. Fleming, of Prairie County, Arks., of the first part, and Waddy Thompson, of New Orleans, La., of the second part, witnesseth:

That the said John T. Fleming agrees to sell and convey in fee-simple, with covenants of warranty and relinquishment of dower, to said Waddy Thompson, his entire plantation, situated on both sides of Clear Lake, part of which is in Pulaski County and part in Prairie County, Arks., known as the Fleming plantation, consisting of not less than four thousand (4,000) acres, with all improvements and appurtenances thereon and thereto belonging, for which the said Waddy Thompson agrees to pay him sixty thousand (60,000) dollars, in ten equal annual installments of six thousand dollars each, without interest, the first installment to be paid on the first day of March, 1867, and the others annually thereafter.

The said Waddy Thompson is to execute to the said John T.
112 Fleming ten promissory notes for said purchase-money, of six thousand dollars each, payable as above indicated. And the

said John T. Fleming is to execute thereupon to the said Thompson, his heirs and assigns, a good and sufficient title for all the lands embraced in said plantation, with covenants of warranty and relinquishment of his wife's dower, in which deed of conveyance the said Fleming is to retain a lien for the purchase-money; said notes to be delivered and said deed to be executed as soon as said Fleming can procure the numbers of the land, and obtain his wife's relinquishment of dower, she being now in the State of Tennessee. This being intended as an agreement in writing to be binding on both parties, their heirs and assigns, until the deed can be executed. And it is further agreed that the notes of the said Thompson are to now executed, and placed in the hands of E. H. English, to be delivered to said Fleming when the deed is prepared, executed, and ready for delivery. The possession of said Thompson of said lands to commence 1st of January, 1867, when the
113 lease of the present tenants expire.

Signed and sealed by the parties the day and year first above written.

J. T. FLEMING. [SEAL.]
WADDY THOMPSON. [SEAL.]

Witness:
PEYTON D. ENGLISH,
E. H. ENGLISH.

Exhibit X 2 to answer.

Which Exhibit X 2 is as follows:

$6,000.] LITTLE ROCK, ARK., *January* 15, 1867.

On the first of March, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being part of or one-tenth of purchase-money of the Fleming plantation. Value received.

(Erased:) WADDY THOMPSON.

No. 1. Due.

(Endorsed:) The within note was paid January 19th, 1867.

(Endorsed:)
J. T. FLEMING.

And on July 4th, anno Domini 1870, as follows:

114 *Record entry.*

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT A. OBER.

On this day came the plaintiff, by Watkins and Rose, his solicitors, and files herein his replication to the answer of the defendant Ober, and on his motion this cause is set down for final hearing at the next term of this court, with leave to both parties to take depositions of witnesses generally herein.

Replication.

Which replication is as follows:

And the said plaintiff comes, and as to the said answer of the said

Robert H. Ober herein, he says that the same is untrue in fact and insufficient in law; and that the plaintiff's said bill is true in fact and sufficient in law, which he will maintain and prove when and how the court may direct; without this, &c.

WATKINS & ROSE,
Sols. for Plaintiff.

And on October 3d, anno Domini 1870, as follows:

115 *Record entry.*

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

On this day came the plaintiff, by Watkins and Rose, attorneys, and the defendants by Garland and Nash, their attorneys, and by consent the plaintiff files his amended bill herein with Exhibits A, B, C, D, E, F, G, and H thereto, and it is agreed that the answer of defendant Ober to the original bill shall be taken as the answer to said amended bill, and the cause is set for hearing on said bill, amended bill, answer, and replication thereto, with leave to both parties to take depositions of witnesses generally, and by consent the defendant Thompson shall have the same benefit of this demurrer to said amended bill as he might have had if the same facts had been set up in the original bill.

Amended bill.

Which amended bill is as follows:

And the said plaintiff, by leave of the court, comes and amends his original bill herein.

116 And thereupon your orator would further allege and show that at the time that the said John T. Fleming sold the said lands to the defendant, Waddy Thompson, the latter gave to the former his eight other promissory notes for the purchase-money of said lands, all dated January 15, 1867, payable to the said Fleming respectively on the first days of March, 1868, 1870, 1871, 1872, 1873, 1874, 1875, and 1876, each being for the sum of six thousand dollars; copies of which notes are herewith filed, marked as Exhibits "A," "B," "C," "D," "E," "F," "G," and "H" hereto, the originals being held by your orator subject to the order of the court and the inspection of the parties in term-time. And your orator further says that a lien was retained on the said lands for the payment of the moneys mentioned in the said notes to the same extent, and the said notes were assigned to your orator in the same manner and at the same time as the note mentioned in said original bill, and on the same terms and with the same effect; and without here repeating the allegations in said original bill contained, your orator states that they are all applicable to the said notes, copies of which are herewith

117 filed; and he adopts the language and tenor of the said allegations as fully correct and perfectly true in respect thereof, except that none of the said last-named notes have ever been prosecuted to judgment, and as to any of said notes that may be due at the time of rendering final decree herein, the said plaintiff prays the same relief that he hath already in and by this said original bill prayed; and that as to the remainder of said notes, that the court may give him such relief as may

tend to secure the payment of the same when they respectively fall due without further litigation and delay, and for such other relief as the equity of the case may seem to require and to your honor shall seem meet.

WATKINS & ROSE,
For Plaintiff.

Which Exhibits A, B, C, D, E, F, G, and H, are as follows:

EXHIBIT A.

Exhibit A to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15, 1867.

On the first of March, 1868, after date, I promise to pay to the
118 order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 2.] WADDY THOMPSON.

(Endorsed:) JOHN T. FLEMING.

(Endorsed:) Presented for payment. Refused and protested for non-payment. Notice given to endorser March 4, 1868.

R. D. ENGLISH,
Not. Pub.

EXHIBIT B.

Exhibit B to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1870, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 4.] WADDY THOMPSON.

EXHIBIT C.

Exhibit C to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1871, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 5.] WADDY THOMPSON.

EXHIBIT D.

119 *Exhibit D to amended bill.*

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1872, after date, I promise to pay to the order

of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 6.] WADDY THOMPSON.

EXHIBIT E.

Exhibit E to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the 1st of March, 1873, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 7.] WADDY THOMPSON.

EXHIBIT F.

Exhibit F to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1874, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 8.] WADDY THOMPSON.

EXHIBIT G.

120 *Exhibit G to amended bill.*

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1875, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 9.] WADDY THOMPSON.

EXHIBIT H.

Exhibit H to amended bill.

$6,000.] LITTLE ROCK, ARK.,
January 15*th*, 1867.

On the first of March, 1876, after date, I promise to pay to the order of John T. Fleming six thousand dollars, being one-tenth part of the purchase-money of the Fleming plantation. Value rec'd.
No. 10.] WADDY THOMPSON.

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10' day of October, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were
121 had, on October 24th, A. D. 1870, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now comes the plaintiff, by Watkins and Rose, his solicitors, and come the defendants, by Garland and Nash, and English, Gantt and English, their solicitors, and, by consent, the plaintiff files amended bill herein, with Exhibits A, B, C, D, E, F, G, and H, thereto, and it is agreed that the answer of defendant Ober to the original bill shall be taken as the answer to said amended bill, and the cause is set for hearing on said bill, amended bill, answer, and replication thereto, with leave to both parties to take depositions of witnesses generally; and, by consent, the defendant Thompson shall have the same benefit of his demurrer to said amended bill as he might have had if the same facts had been set up in the original bill; and it is ordered that this order be entered nunc pro tunc as of October 3d, 1870.

And, by consent, certain depositions on the part of the plaintiff herein are published and filed without prejudice.

122 And on November 9th, anno Domini 1870, as follows:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now come the solicitors in this cause, and file herein their written agreement for extending time of taking depositions and publication of the same, in words and figures following, to wit:

United States circuit court, eastern district of Arkansas. In chancery.

GALLAGHER
vs.
THOMPSON ET AL.

The parties agree for the clerk to open all depositions that may come to him in said cause, as soon as they are received by him, and they agree farther to extend the time of taking depositions in said cause till the first Monday in April next.

WATKINS AND ROSE, *for Pl'ff.*
GARLAND AND NASH, *for Defts.*

123 Whereupon it is ordered that the time for taking depositions be extended, and that they be published by the clerk in conformity to said agreement.

Be it remembered, that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10 day of April, anno Domini one thousandt eight hundred and seventy-one, at the United States court-room, in the city of Little Rock, Arkansas—the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, presiding, & Hon. Henry C. Caldwell, district judge, holding said court—the following proceedings were had, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

And now comes the complainant, by Watkins and Rose, his solicitors, and comes the defendants, by Garland and Nash, their solicitors,
124 and, on their motion, it is ordered that the depositions on file in this cause be opened and published by the clerk without prejudice.

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 8 day of April, anno Domini one thousand eight hundred and seventy-two, at the United States court-room in the city of Little Rock, Arkansas—the honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Come the defendants, by A. H. Garland, esq., their solicitor, and, on his motion, it is ordered that the depositions on file in this cause be opened and published by the clerk.

125 Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 28 day of October, anno Domini one thousand eight hundred and seventy-two, at the United States court-room in the city of Little Rock, Arkansas—the honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had on November 9, 1872, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes the complainant, by Watkins and Rose, his solicitors, and come the defendants, by A. H. Garland, their solicitor, and by agreement of parties this cause is continued and set down for hearing at the next term of this court.

Be it remembered that at a circuit court of the United States
126 of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 14 day of April, anno Domini one thousand eight hundred and seventy-three, at the United States court-room in the city of Little Rock, Arkansas—the honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had on the 15th April, 1873, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes the complainant, by U. M. Rose, esq., his solicitor, and come the defendants, by A. H. Garland, esq., their solicitor, and by consent this cause is continued and set down for hearing at the next term of this court.

Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 27 day of October, anno Domini one thousand eight hundred and seventy three, at the United States court-room in
127 the city of Little Rock, Arkansas—the honorable Henry C. Caldwell, district judge, presiding and holding said court—the following proceedings were had on January 28, 1874, to wit:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes the complainant, by U. M. Rose, esq., his solicitor, and come the defendants, by A. H. Garland, esq., their solicitor, and file herein their agreement, and this cause is submitted to the court. Which agreement is as follows:

Agreement.

CHARLES GALLAGHER
vs.
ROBERT H. OBER ET AL.

To save the trouble of taking the deposition of defendant Ober herein, it is agreed that the answer of said Ober, herein, may be considered as his deposition on his behalf.

A. H. GARLAND,
For Defts.
U. M. ROSE,
For Pltff.

128 Be it remembered that at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 13 day of April, anno Domini one thousand eight hundred and seventy-four, at the United States court-room in the city of Little Rock, Arkansas—the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, presiding, and Hon. Henry C. Caldwell, district judge, holding said court—the following proceedings were had on April 24, 1874, to wit:

Record entry.—Decree.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Now on this day came said plaintiff, by W. M. Rose, esq., his solicitor,

and also came said defendants, by A. H. Garland, esq., their solicitor, and this cause came on for final hearing; and the court being now sufficiently advised of the law arising herein, and of the proper decree to be made in this cause, it is now ordered, considered, and decreed that the
129 defendant Waddy Thompson pay to the plaintiff the sum of forty-nine thousand nine hundred and three dollars, being the amount of the judgment rendered in favor of the said plaintiff against said Thompson in the fifth district court for the parish of Orleans, in the State of Louisiana, on the twelfth day of March, 1869, and the overdue notes mentioned in the bill of complaint herein, with the interest accrued thereon; and it is further decreed that the said sum constitute a lien on the lands hereinafter named, the same being the amount of the purchase-money agreed to be paid by said defendant Thompson to John T. Fleming, the assignee of the plaintiff herein, and that the said lien have force and effect from the fifteenth day of January, one thousand eight hundred and sixty-seven, the date of said purchase, the said lands being described as follows:

(For description of the lands, see bill of complaint, page' 3–17.)

It is further decreed that unless the said defendants, or either of them, should pay to the plaintiff said sum of forty-nine thousand nine hundred
130 and three dollars, above decreed to him, on or before the first day of July next, then the marshal of this district shall proceed to sell said lands at public auction to the highest bidder, at the front door of the building in which this court shall be held, in the city of Little Rock; the said sale to be made on a credit of three months, bond and approved security being required of the purchaser or purchasers, a lien being retained on said land for the purchase-money at said sale, with power for the court to order a resale in case the same shall not be promptly paid; but in case said plaintiff should purchase any of said lands, no bond or security shall be required of him except for any excess over the amount above decreed unto him. The marshal shall give twenty days' notice of the time and place of said sale, by advertisement in some newspaper published in the city of Little Rock, and he shall make due report unto this court of all his acts done under this decree. And it is farther decreed that said sale shall be made subject to the vendor's lien said plaintiff for the payment of two notes executed by
131 said defendant Thompson to said John T. Fleming, dated January 15th, 1867, each being for the sum of six thousand dollars payable respectively on the first day of March, 1875, and the first day of March, 1876, being for a part of said purchase-money, the same having been assigned by said Fleming to said plaintiff; and in case said sale should not produce enough to satisfy this decree, it is farther ordered that the plaintiff, for the unpaid residue thereof, have execution against said Thompson as at law. And leave is now given and reserved unto said plaintiff to file herein and prosecute a supplemental bill or bills for the enforcement of the payment of the said two notes which have not yet matured, whenever the same, or either of them, shall have become due. It is farther ordered that said defendants pay the costs of this suit, and the cause is reserved for farther directions. And the defendants pray an appeal to the Supreme Court of the United States, which is granted.

And on June 16th, anno Domini 1874, as follows:

Record entry.

CHARLES GALLAGHER
vs.
WADDY THOMPSON AND ROBERT H. OBER.

Comes the defendant, Robert H. Ober, by A. H. Garland, esq.,
132 his solicitor, and files herein his bond for appeal, which bond is as follows:

Bond.

Know all men by these presents, that we, Robert H. Ober, as principal, and P. T. Mask, Gordon N. Peay, C. Pemberton, T. J. Churchill, A. L. Lefane, J. T. Chidester, as sureties, are held and firmly bound unto Charles Gallagher in the sum of ten thousand dollars, to be void on condition that, whereas said Robert H. Ober has taken an appeal to the Supreme Court of the United States from a decree in chancery rendered in a cause lately pending in the United States circuit court for the eastern district of Arkansas, wherein said Charles Gallagher was plaintiff and Waddy Thompson and said Robert H. Ober were defendants: Now, the condition of this obligation is such that if the above-named Robert H. Ober shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be null and void; else to remain in full force and virtue.

Witness our hands and seals this 21st day of May, 1871.

133
ROBERT H. OBER. [SEAL.]
P. T. MASK. [SEAL.]
GORDON N. PEAY. [SEAL.]
C. PEMBERTON. [SEAL.]
T. J. CHURCHILL. [SEAL.]
A. S. LEFANE. [SEAL.]
J. T. CHIDESTER.

Filed and approved June 6, 1874.

RALPH L. GOODRICH, *Clk.*

Plaintiff's depositions

The following depositions were read on the part of the complainant on the final hearing:

Interrogatories for plaintiff.

Interrogatories for the plaintiff.

1. State your name, age, residence, and occupation.
2. State whether you are acquainted with the parties to this suit.
3. State whether you were formerly in partnership with defendant, Waddy Thompson, at Memphis, Tennessee; and, if so, what was the style of your firm, and during what time did said business continue?
4. State whether your said firm at any time contracted any debt with the firm of R. H. Ober & Co.; and, if so, how did the said debt originate, and what was the total amount thereof in February, 1868?

134 5. State whether the defendant, Robert H. Ober, was a member of said firm of R. H. Ober & Co., and where the said firm did business.

6. State where the firm of Waddy Thompson & Co. did business, and of whom it was composed.

7. State whether the said firm of Waddy Thompson & Co. had contracted any debt with the said firm of R. H. Ober & Co.; and, if so, how did the said debt originate, and what was the total amount thereof in February, 1868?

8. State what efforts, if any, the said R. H. Ober made during the winter of 1867–'8 to secure the debt due his firm from the firms of Waddy Thompson & Co. and Thompson & Cummins.

9. State anything you know in reference to any proposition made by said Thompson to Ober to transfer the Fleming Clear Lake place to Ober, in the winter of 1867–'8, and if you know, anything, state the terms of such offer, and narrate the history of any negotiations connected therewith.

10. State whether said Ober and Thompson visited Clear Lake, Arkansas, in view of a sale or conveyance of said place; and, if so, what was the result of the said trip?

135 11. If any such sale or conveyance was made, what was the consideration of the same, and how much of said indebtedness, if any, was extinguished thereby; and were any receipts given; and, if so, for what and how much, and by and to whom?

12. Who was in possession of these lands in 1868; and, if they were rented, to whom were they rented, and for how long a time?

13. When did said Ober get possession of said lands?

14. Did he pay anything to get such possession besides the purchase-money; and, if so, to whom, when, and how much, and under what circumstances?

15. Who cultivated the said lands in 1868?

16. Who received the rents and profits of the same?

17. Did E. H. English receive any part of such rents and profits?

18. What claim did said Thompson make to said land up to the time of the transfer to Ober?

19. Did any one else claim the same, or exercise any ownership of the said land besides Thompson up to the time of said transfer?

20. Did you ever hear that E. H. English claimed to own said
136 land; and, if so, by virtue of what right did he assert his claim?

21. State how far Ober was informed of the condition and circumstances connected with the said Clear Lake place from August, 1867, till February, 1868, and whether he was informed of the sale of any of the lands under execution?

22. State what expressions were used by said Ober, at or near the time of said sale, showing satisfaction, or otherwise, with the arrangement; and, if he expressed himself as pleased with the same, upon what grounds?

23. Did the said Thompson ever inform you that any of the lands had been bought by Judge E. H. English under execution; and, if so, when and for whom did he say that said English made his purchase?

24. Who was the authorized agent and attorney of said Thompson in Arkansas during the years 1866, 1867, '68, and '69?

25. If said English was such agent, do you know of any drafts drawn by said English on said Thompson during that period?

26. If so, what were these drafts drawn for?

27. Did any of said drafts relate to the said Clear Lake place; if so, and any of them appear to be any part of the consideration
137 of said place; and, if so, state the amount and date thereof, and the time of the payment of the same.

28. Do you know of the said Ober having paid said English any money except for attorney's fees? and, if so, state the amount and date of any and all such payments.

29. Did Thompson receive any cotton at Memphis, in June, 1869, or about that time, as part of crop from the said Clear Lake place, cultivated in 1868 by Bocock & said Thompson; and, if so, how many bales?

30. Do you know of the said English ever getting any rents and profits of said place; and, if so, how much?

31. Who controlled the said place from the time that said Thompson bought it until his transfer to said Ober?

32. What control did said English ever exercise over said place?

33. Are you related to either of the parties to this suit, or interested in the event thereof?

WATKINS & ROSE, *for Plff.*

Cross-interrogatories.

X-interrogatories:

1st. Be particular in giving your name, age, and residence, and do so fully.

138 2d. When did you become acquainted with the parties to the said suit? Be as exact as possible.

3d. State all the facts particularly in reference to any partnership between you and Waddy Thompson.

4th. What evidence have you of any debt contracted by you & Waddy Thompson with R. H. Ober & Co.? & exhibit the same, with your definition.

5th. Be very careful in giving the names of R. H. Ober & Co., and Waddy Thompson & Co., & the places & times of their association.

6th. Be careful, in any history you may narrate under the 9th interrogatory, and state all the facts; and if you have any writings evidencing what you say, attach them to your deposition.

7th. Did you go with said Ober & Thompson to Clear Lake; and if you know the result of their trip there, how do you know it?

139 8th. Annex to your answer to the 11th interrogatory papers or writings evidencing sales & other matters therein named.

9th. How do you know anything of the renting of said place, & the matters named in the 12th interrogatory?

10th. Do you know of your own knowledge who cultivated said lands in 1868, and who received the rents thereof?

11th. If you say E. H. English received any rents for said lands, state how you know this.

12th. In speaking of a transfer of said lands in answer to the 18th & 19th interrogatories, please state what transfer, all you know about it, & from whom you heard it.

13th. Did you ever hear from E. H. English himself that he claimed any of said lands, when & where?

14th. In stating expressions made by Ober, be particular as to dates, places, and as to persons present when they were so made.

140 15th. In stating what the said Waddy informed you about Judge English purchasing said lands, state particularly who informed said Waddy; when did Waddy inform you; where did Waddy inform you, & who was present.

16th. How do you know who was the authorized agent of Thompson for 1866-'7-'8-'9?

17th. If you speak of any drafts in answer to the 20th interrogatory, tell what has become of them, & attach copies thereof, if you can, to your deposition, and narrate, as far as you can, a history of said drafts.

18th. If you state you know of said Ober paying said English anything, in response to the 28th interrogatory, tell how you know this, & all about it.

19th. If you know anything in response to the 29th interrogatory, tell all about that, too.

20th. How do you know said English ever got any rents & profits from said place, & all you know about it.

141 21st. How do you know who controlled said place from the time said Thompson bought it till he transferred or sold it?

22nd. How do you know that said English ever exercised any control over said place?

23d. State fully the extent of your interest in this suit.

24th. In response to the several interrogatories propounded to you above, state fully all you know of the matters therein, & how you obtained your information.

GARLAND & NASH.

Deposition of A. L. Cummins.

Deposition of A. L. Cummins, taken, sworn to, and subscribed before me, the undersigned, James O. Pierce, commissioner of the United States, appointed by the circuit court of the United States in and for the district of West Tennessee, and duly qualified and acting as such, at my office, No. 343 Main street, in the city of Memphis, in said district, on the 28th day of February, A. D. 1871, and days succeeding, under and pursuant to the agreement of counsel therefor, and

142 interrogatories and cross-interrogatories hereto annexed and made part thereof, to be read in evidence on the hearing of a certain cause pending in the circuit court of the United States in and for the eastern district of the State of Arkansas, in chancery, wherein Charles Gallagher is complainant and Waddy Thompson and Robert H. Ober are defendants, that is to say:

DEPOSITION.

The said witness, A. L. CUMMINS, being duly sworn, deposes and says as follows:

In answer to int. 1st. My name is A. L. Cummins; age, 35 years; residence, Memphis; and occupation, merchant.

Answer to int. 2d. I am acquainted with the defendants, but not with the plaintiff.

Answer to int. 3d. I was formerly a partner with deft. W. Thompson, at Memphis. The firm-name was Thompson & Cummins, and our business continued from August or September, 1867, to about September, 1868.

Answer to int. 4th. The drafts of Thompson & Cummins were drawn on R. H. Ober & Co., at New York City, for $5,000. They were

145 the drafts of the firm, and that was the amount due on them in February, 1868.

Answer to int. 5th. He was a member, and the firm did business in ew York City.

Answer to int. 6th. The firm of Waddy Thompson & Co. did business

in New Orleans. I do not know who composed the firm. I think Wm. B. Morris was a member.

Answer to int. 7th. I don't know of my own knowledge, but Mr. Ober told me that Thompson & Co. owed his firm about $20,000, (twenty thousand dollars.) I don't know how it originated.

Answer to int. 8th. I know that Mr. Ober came here to try & secure his debt, & I think went to Arkansas with Thompson.

Answer to int. 9th. I heard from the parties after they returned from Arkansas that Thompson had transferred to Ober the Clear Lake place, and I learned from Thompson that his notes were out against the place to the amount of $50,000 or $60,000.

144 Answer to int. 10th. My understanding was, when they went there, that Thompson had some cotton there, which he was to sell, to pay Ober, or pay him in cotton, and after they returned I learned that they had been to the Clear Lake place, & that the place had been transferred to Ober.

Answer to int. 11th. I learned from Thompson & Ober that Ober took this place in payment of the debts of W. Thompson & Co., and Thompson & Cummins, and I understood that those debts were extinguished by the transfer. I don't know anything about any receipts having passed between them. I heard that Ober got a deed for the place—heard this from the parties.

Answer to int. 12th. I don't know who was in possession in 1868. Thompson during that year bought goods for W. H. Bocock, & shipped them over there to Plum Bayou Landing.

Answer to int. 13th. About January 1st, 1869. That is only my impression, derived from what Thompson & Ober told me, that Thompson was not to give possession till 1869.

145 Answer to int. 14th. I think Ober agreed to furnish about $2,000, in supplies for the plantation in 1868. I don't know whether he did furnish them, or how it was settled.

Answer to int. 15th. I think W. H. Bocock did.

Answer to int. 16th. I do not know.

Answer to int. 17th. That I do not know.

Answer to int. 18th. He claimed to own it, and always told me he owned it down to the time he transferred to Ober.

Ans. to int. 19th. Not that I know of.

Ans. to int. 20th. I heard a conversation between Thompson & Ober, in which it was stated that Judge English had some claim to it by virtue of having bought it under execution.

Ans. to int. 21st. I think I have heard Thompson say that Ober knew all about the condition of the title to the land. It was my understanding that English had bought the land in for Thompson's benefit, or to protect Thompson, and I understood from Thompson that Ober knew this fact, and that he took his attorney, Judge Kerr, of Clarendon,

146 Ark., with him, to investigate the title. Also that Ober knew about the notes being out against the place; this I understand from Ober also, and that he relied on the title derived from both English & Thompson. I know that the debts owing to Ober & Co. were released.

Ans. to int. 22d. I never heard him say whether he was pleased or not.

Ans. to int. 23d. I think he did, and that he said English bought them to protect him. That was the inference I got from him. That was about the time Ober was here.

Ans. to int. 24th. I think in 1868, Judge English acted for him. I don't know as to the other years named.

Ans. to int. 25th. I don't recollect of any drafts of English on the firm. I cannot answer exactly without reference to the books of Thompson & Cummins, which are not now in my possession, but are in possession of Waddy Thompson.

Ans. to int. 26th. I cannot answer, for same reason.

147 Answer to int. 27th. I cannot answer as to drafts, but it was my understanding that English was settled with for his purchase of the place under execution. Thompson drew some drafts on the firm while he was over there in the winter of 1867–'8. I never understood that Ober paid English anything. I do not know the amount that was paid him.

Ans. to int. 28th. I do not know of his ever paying him any money for any purpose.

Ans. to int. 29th. I do not know. Don't recollect of his receiving any cotton in 1869, and cannot answer without seeing the books of Thompson & Cummins.

Ans. to int. 30th. I do not.

Ans. to int. 31st. I don't know, but I suppose Thompson did.

Ans. to int. 32d. I don't know of his exercising any.

Ans. to int. 33d. I am not related to any of them, nor interested in the suit.

148 Cross-examination:

Ans. to x-int. 1st. Have done so fully.

Ans. to x-int. 2d. I became acquainted with deft. Thompson, I think, in August, 1867. I knew deft. Ober before the war, in St. Louis, and became well acquainted with him in New York, in 1864. I don't know the plaintiff.

Ans. to x-int. 3d. Have stated the facts in answer to direct int. 3d.

Ans. to int. 4th. I have no papers or other evidence in relation to the debt of Thompson & Cummins to R. H. Ober & Co., and I testify from my memory in regard thereto.

Ans. to x-int. 5th. The firm of R. H. Ober & Co. was composed of R. H. Ober and J. B. Cates, doing business in New York City, about the time that Thompson & Cummins were doing business here. I have answered to direct int. 6th as fully as I can in regard to W. Thompson & Co. I think that firm had been doing business some years before 1867.

149 Ans. to x-int. 6th. I have answered to the 9th direct int. all I know about that transaction. I have no writings evidencing what I say, and I learned all I know about it from Thompson & Ober.

Ans. to x-int. 7th. I did not go to Clear Lake with them. I learned the result of their trip from them and from their statements and conversations.

Ans. to x-int. 8th. I have no such papers or writings.

Ans. to x-int. 9th. I know nothing of the renting of the place. The goods shipped to Bocock passed through our hands.

Ans. to x-int. 10th. I do not.

Ans. to x-int. 11th. I don't know that he did.

Ans. to x-int. 12th. I learned of the transfer from Thompson to Ober from the parties themselves, as I have already stated, and know nothing about it than I have already stated.

Ans. to x-int. 13th. I did not.

150 Ans. to x-int. 14th. Ober's statements were made here in Mem-

phis, either at our office or at other places in the city. I cannot state the dates particularly, & cannot now name any one else who was present when they were made.

Ans. to x-int. 15th. I do not know who informed Waddy Thompson of that fact. He told me at our office in Memphis. I do not know if any one else was present, and it is probable no one else was.

Ans. to x-int. 16th. I cannot state the source of my impression as to Judge English's agency in 1868, except from Thompson's statements. Don't know as to the other years named.

Ans. to x-int. 17th. Cannot answer any further than I have already done to direct int. 25th.

Ans. to x-int. 18th. Don't know anything about it.

Ans. to x-int. 19th. Have already answered as fully as I can.

Ans. to x-int. 20th. I don't know that he ever did.

151 Ans. to x-int. 21st. I only know it from what Thompson told me, as already stated.

Ans. to x-int. 22d. I don't know it.

Ans. to x-int. 23d. I have none at all.

Ans. to x-int. 24th. I have answered everything as far as I can, and have given the sources of my information.

And further deponent saith not.

A. L. CUMMINS.

Interrogatories for plaintiff.

1. State your name, age, residence, and occupation.

2. State whether you are acquainted with the parties to this suit.

3. State the nature and terms of your business engagements with Waddy Thompson & Co., at New Orleans.

4. When was the Clear Lake place in Pulaski and Prairie Counties, Arks., bought by Waddy Thompson from John T. Fleming?

5. State the terms and consideration of said purchase, and all that you know about the same.

152 6. When was Fleming in New Orleans?

7. What do you know of any transaction between John T. Fleming and Charles Gallagher respecting the discount of Waddy Thompson's notes for the Clear Lake place, executed by said Thompson to said Fleming?

8. Did you personally aid said Fleming in inducing said Gallagher to discount said notes; and, if so, how?

9. What amount of cash did John T. Fleming pay Waddy Thompson & Co., if any, as part of the proceeds of said Thompson's notes discounted by said Gallagher, and at what time?

10. What was the amount of the indebtedness of Waddy Thompson & Co. to Robt. H. Ober in the winter of 1867 & 1868?

11. State whether you have access to the books of Waddy Thompson & Co. referring to this matter.

12. If so, how does it appear by the said books that the said debt was paid off? Attach copies of said books so far as the same relate to this matter, and make said copies exhibits to your deposition.

13. Set out the closing entries of said books relating to the Clear Lake place, Arkansas, and to the business of R. H. Ober & Co., of

153 New York, and make the same an exhibit to your deposition.

14. State whether the defendant, Robert H. Ober, was a member of said firm of R. H. Ober & Co., and where the said firm did business.

15. State whether the name of Elbert B. English appears on the books of the said firm, as if he were the owner of or any way interested in the said Clear Lake place.

16. State whether the books of said Waddy Thompson & Co. show that said English received any part of the crop of the Clear Lake place, or any of the rents of the same, or that he received any money or property except for fees as an attorney, or made any other charges on his account except for services performed as an attorney.

17. Who was the regular and authorized agent and attorney of Waddy Thompson in Arkansas during the years 1865, '6, '7, '8, and '9.

18. If said English was such agent and attorney, state what drafts he drew for such services, and how the same were paid, and whether promptly or not.

19. What was the amount paid said English for bill of fees for
154 drawing up deed from Fleming to Thompson, in March 1867?

20. State whether said English advised said Thompson at any time that the Clear Lake place had been sold under an old judgment against said Fleming, and how much he said the same was sold for, and when he rendered this advice, if at all.

21. State for whom said English said he had made said purchase.

21½. State whether said English drew on Waddy Thompson or Waddy Thompson & Co. for any money on account of said purchase; and, if so, when and for how much.

22. State who had control of said Clear Lake Place during the years from 1865 to 1869, and down to the time of the *date* to Ober.

23. State who received the rents and profits of said place during the years 1867 and 1868.

24. State whether said English received any of said *of said* rents and profits during the years 1867 and 1868, or at any other time.

25. State whether said Ober paid Waddy Thompson, in the spring of 1868, any part of the consideration of said Clear Lake place; and, if so, how much, and under what circumstances, and at what time.

155 26. If so, state whether said English was consulted in said matter.

27. Who cultivated the Clear Lake place for the year ending Dec'r 31st, 1868.

28. Who enjoyed the proceeds of the crops and received the rents of said lands?

29. Did any part thereof go to the credit of said English; and, if so, how much?

30. If any additional consideration was paid by said Ober to said Thompson for the Clear Lake place in the spring of 1868, state how much was paid and how.

31. State whether one Bocock sold any of the stock belonging to the Clear Lake place to said Ober in the spring of 1868; and, if so, whether he gave a note therefor; and, if so, to whom the said note was transferred, and who now holds and claims the said note, and whether exclu sively or not.

32. State what was the condition of the financial affairs of Waddy Thompson & Co. in the winter of 1867 and 1868, whether embarrassed or otherwise, and, if embarrassed, to what extent.

33. State what the amount of their liabilities was, and the amount of their assets and the extent of their liabilities to R. H. Ober & Co. at that period.

156 34. State any other matter that you may know in relation to the matter in controve sy in this suit.

35. State whether you are in any manner interested in the result of this suit, or akin to either of the parties.

WATKINS & ROSE, *for Plff*

Cross-interrogatories.

Interrogatories.

1st. Be particular in giving your name, your age, and your place of residence, as well as your occupation.

2d. When and where did you become acquainted with the parties to said suit or either of them?

3d. If there are any papers evidencing the nature and terms of your business engagements with Waddy Thompson in your possession or subject to your control, please attach them, or copies of them, to your deposition.

4th. How do you know when the Clear Lake place was bought by Waddy Thompson from Fleming, and were you present when the same was bought?

157 5th. How do you know the terms and consideration of said purchase, or anything else you do know of it?

6th. How many times was Fleming in New Orleans?

7th. If you know anything of the transaction named in the 7th interrogatory, state how you know the same.

8th. If you aided Fleming in inducing said Gallagher to discount said notes, how did you aid him, and what was the inducement to said Gallagher?

9th. Have you any receipts for the cash payments mentioned in interrogatory No. 9; if not, do you know where they are?

10th. Where were such cash payments, if any, made?

11th. In stating the indebtedness of Thompson & Co. to Ober be specific, and tell how you know what you state, and annex papers, if any you have, showing such indebtedness.

158 12th. Who has the books showing the indebtedness of Thompson & Co. to Ober, and where have they been since 1868?

13th. Present said books with your deposition to the officer who takes the same, to be sent to the court with such deposition, or show cause why you cannot.

14th. Set out the opening entries as well as all immediate entries, to the closing of said books, relating to the Clear Lake place and the business of Ober & Co., and make the same exhibits to your deposition.

15th. State fully all who composed the firm of R. H. Ober & Co.

16th. If you state the name of Elbert H. English appears on the books of said firm as if he were the owner of, or any way interested in, the said Clear Lake place, state how it so appears, who made such entry or entries, and exhibit a copy of the same with your deposition.

159 17th. In responding to the 10th interrogatory above, state who made the entry in the books, and how it came there, and all about it, and exhibit a copy of the same with your deposition.

18th. How do you know who was the regular authorized agent and attorney of Waddy Thompson in Arkansas in 1865, & '6, & '7, & '8, & '9? Be precise about this.

19th. If you speak of any drafts being drawn by E. H. English, give dates, amounts, and all, and tell where these drafts are, and exhibit them with your deposition, or state why not.

20th. Exhibit with your deposition any bill of fees paid to said English or for him, or state why not.

21st. How do you know said English ever advised Thompson about sale of Clear Lake place; who told you? And tell all about it.

22d. In stating anything said by said English in reference to the matters aforesaid, please state whether it was in conversation, or by letter,
160 or in what manner. Give dates in full, and the names of persons he conversed with or wrote to.

23d. If you have any letters of said English on this subject, attach them to your deposition, or state why not.

24th. Attach to your deposition any draft or bill drawn by said English for the purchase of said Clear Lake place, or state why not.

25th. State fully and particularly how you know who had possession of the Clear Lake place for the years 1865 to 1869, and until Ober purchased the same?

26th. State how you know who received the rents of said Clear Lake place for the years 1867 & 1868, and all about it.

27th. State particularly how you know the said English ever received any rents at all for said place, and all about it.

28th. How do you know that said Ober ever paid Thompson
161 for said place, in whole or in part? Be particular about this.

29th. How do you know whether said English was consulted about the matter of such purchase, or the payment therefor?

30th. In stating who cultivated said place for 1868, give his entire name, and then tell how you know the fact.

31st. If you know who enjoyed the rents or proceeds of the crops, as asked in 28th interrogatary by plaintiff, tell how you know this, and all about it.

32d. If any of the proceeds of said crops went to credit of said English, how, when, and where, and who placed them to his credit?

33d. In speaking of any additional consideration paid by Ober to Thompson, be particular and give names, dates, amounts, and all, and then tell how and from whom you derived your information.

34th. Where is the note spoken of in the 31st interrogatory
162 above by plaintiff? Exhibit it with your deposition, or state why not, and then be accurate in telling how you know anything about this matter.

36th. In stating the condition of the financial affairs of Waddy Thompson & Co., in winter of 1867–'8, tell how you got your information, and attach a schedule of their debts and credits to your deposition, or tell why not.

36th. In stating the liabilities and assets of said Thompson & Co., and their debt to Ober & Co., tell from what source you obtain your information, and attach schedules of such liabilities and assets to your deposition.

37th. Be particular in stating any other matter of interest to the parties in said suit.

38th. State fully the extent of your interest in the result of said suit.

39th. In all cases where you give information in said cause, tell fully how you obtained the same, and give all the facts connected therewith.

GARLAND & NASH,
For Defts.

163 *Deposition of Wm. P. Morris.*

To the first interrogatory he saith: My age is thirty-nine years; my name is William B. Morris. I reside in the city of New Orleans, State of Louisiana, and am by occupation an insurance agent.

To the second interrogatory he saith: I am acquainted with all the parties to this suit.

To the third interrogatory he saith: I was a member of the firm of Waddy Thompson & Co. from June, 1865, to June, 1868, at New Orleans. I have now charge of the books and papers of said firm, in the capacity of liquidating partner and trustee of said firm. The said firm was dissolved in June of 1868.

To the fourth interrogatory he saith: The Clear Lake place, in Prairie and Pulaski Counties, Arkansas, referred to in said interrogatory, was purchased by Waddy Thompson of John T. Fleming in January, 1867.

To the fifth interrogatory he saith: The terms of purchase were sixty thousand dollars, payable in ten yearly equal instalments of six
164 thousand dollars each, without interest, evidenced by notes expressing on their face the consideration thereof, and operating as a mortgage on the place. The first payment was made at New Orleans, March 4th, 1867, six thousand dollars, for note dated January 18th, 1867, Little Rock, Ark., collected through Merchants' National Bank at Little Rock, and paid City National Bank at New Orleans. I do not remember to have read the deed from Fleming to Thompson for the Clear Lake place, but I know from conversations with said Fleming and Thompson that said deed recited the consideration, consisting of said notes, and contained a provision to the effect that they were to be a vendor's lien upon said place, as security for their payment, and that was the verbal contract between them.

To the sixth interrogatory he saith: John T. Fleming was in New Orleans during March, 1867. He was here for about three weeks. I came here from Shreveport to meet him by appointment at that time.

To the seventh interrogatory he saith: John T. Fleming was indebted to Charles Gallagher, of New Orleans, and also to
165 Thompson, Morris & Co. It was a mutually satisfactory arrangement for Fleming to sell the fifty-four thousand dollars of Clear Lake notes, or the nine notes of six thousand each, and, with the balance in cash received therefrom, to pay his individual debt to Thompson, Morris & Co., that firm being a part or branch of Waddy Thompson & Co. The firm of Thompson, Morris & Co. *was* domiciliated at Shreveport, Louisiana; Waddy Thompson & Co. was domiciliated at New Orleans. Those notes were purchased by Mr. Charles Gallagher.

To the eighth interrogatory he saith: I made no personal effort to induce said Gallagher to discount said notes, but Mr. Thompson personally aided Mr. Fleming in making the negotiation with said Gallagher. I was kept advised of the progress of the transaction by Mr. Thompson. The firm of Waddy Thompson & Co., of which I was a member, was desirous of getting the money due it from Fleming out of the proceeds of those notes.

To the ninth interrogatory he saith: John T. Fleming paid over to Waddy Thompson six thousand five hundred dollars, part of pro-
166 ceeds of Clear Lake land notes sold Gallagher, and this sum of six thousand five hundred dollars was placed to the credit of John T. Fleming on the books of Thompson, Morris & Co., through books of Waddy Thompson & Co. That was on the 23d day of March, 1867.

To the tenth interrogatory he saith: R. H. Ober & Co. were creditors of Waddy Thompson & Co. to the extent of twenty thousand dollars, and of Thompson & Cummins, of Memphis, Tennessee, to the extent of five thousand seven hundred & eighty-three $\frac{2}{100}$ dollars, a total of twenty-five thousand seven hundred and eighty-three $\frac{2}{100}$ dollars, exclusive of interest and commissions, in December, 1867.

To the eleventh interrogatory he saith: I have, personally, charge of the books and papers of Waddy Thompson & Co., as hereinbefore explained.

To the twelfth interrogatory he saith: The indebtedness to R. H. Ober & Co. by Waddy Thompson & Co., and Thompson Cummins, of Memphis, was liquidated on the books of Waddy Thompson & Co. by sale and transfer of the Clear Lake place, Arkansas, the same
167 place hereinbefore referred to, to R. H. Ober & Co., on February 29th, 1868. I annex the statement from the books of Waddy Thompson & Co., showing that the R. H. Ober & Co. account was balanced by charging them with said Clear Lake place, twenty-five thousand seven hundred and forty-four $\frac{90}{100}$ dollars, ($25,744.90,) whilst the Clear Lake place is credited by a corresponding entry and amount, showing a sale thereof to R. H. Ober & Co. There were also some amounts due R. H. Ober & Co. for interest and commissions, which do not appear on the books, because it was a lumping trade between said Ober & Co. and Thompson, by which the indebtedness of Thompson & Co. and Thompson & Cummins to R. H. Ober & Co. was to be settled and the account balanced. The detailed statement referred to in this answer is here furnished, marked "A," and made part hereof.

To the thirteenth interrogatory he saith: Said paper marked "A," just referred to, contains all the entries here enquired about.

To the fourteenth interrogatory he saith: Robert H. Ober was senior member of the firm of R. H. Ober & Co., domiciliated at No. 43 Broad street, New York city, as commission merchants.

168 To the fifteenth interrogatory he saith: Albert H. English's name does not appear on the books of W. Thompson & Co. as owner of the Clear Lake place, or as in any way interested therein, either directly or indirectly.

To the sixteenth interrogatory he saith: It does not appear on the books of Waddy Thompson & Co. that said English had anything to do with said Clear Lake place, except as attorney, trustee, or agent for Waddy Thompson. He received no part of the crop, nor any portion of the rent; no money or property except fees for services.

To the seventeenth interrogatory he saith: Judge E. H. English has acted as Waddy Thompson & Waddy Thompson & Co.'s authorized attorney and agent from 1865 to this date, and is still engaged in lawsuits of Waddy Thompson's.

To the eighteenth interrogatory he saith: I annex hereto such drafts made by E. H. English as I have been able to find, as the only way I have to answer this interrogatory. Those papers are marked "B 1," "B 2," "B 3," "B 4," and "B 5." The large draft for twelve hundred and seventy-five $\frac{15}{100}$ dollars appears to have been drawn on account
169 of advances on cotton, and is explained by the letter marked "B 4." Waddy Thompson also paid to said English one hundred dollars, on account of fees, on the 26th of February, 1867, which appears to his credit in said Exhibit A. Every draft made by English has had due honor.

To the nineteenth interrogatory he saith: It appears from the books of Waddy Thompson & Co. that English received one hundred dollars for drawing the deed from Fleming to Thompson, and drew for stamps and recording seventy dollars. The fees charged by English for transfer of Clear Lake place to R. H. Ober were three hundred and ninety dollars, as appears by Waddy Thompson's sight-draft, dated Little Rock, March 31st, 1868, hereto annexed, marked "B 3."

To the twentieth interrogatory he saith: In September, 1867, E. H.

English wrote to Waddy Thompson at New Orleans that an execution against John T. Fleming on a judgment older than the date of Fleming's sale to Thompson, said English had bought in the Clear Lake place for Waddy Thompson for the sum of eight hundred and forty-four $\frac{70}{100}$
170 dollars, ($844.70,) requesting remittance therefor. I replied to English, September 15th, 1867, that this draft for the amount, when really needed, would have due honor, but that I would refer the matter to Thompson. I also wrote to Waddy Thompson, then in Memphis, same date, September 15th, 1867, of this fact. In this connection I add letter of William F. Hicks, dated April 13th, 1867, to E. H. English, requesting payment of tax for 1866, and E. H. English's endorsement thereon, April 17th, 1867, advising payment thereof through Charles Wilkenson. Mr. Wilkenson was an agent of the firm of Waddy Thompson & Co., who was at that time in Arkansas, and advanced the money for the payment of said taxes. Said letter of W. F. Hicks, and endorsement of said English thereon, is marked "C," as part of this deposition.

To the twenty-first interrogatory he saith: English said he was compelled to buy the land for Waddy Thompson, or it would have been lost to him, Waddy Thompson, by sale to some one else, stating that he bid it off at sheriff's sale in the name of Waddy Thompson for eight hundred & forty four $\frac{70}{100}$ dollars, ($844.70.)

171 To the twenty-first-&-a-half interrogatory he saith: I refer to a letter of Thompson & Cummins, dated December 12th, 1867, and find that Waddy Thompson & Co. paid a draft for five hundred dollars, December 14th, 1867, at New Orleans, this being the one-half of a thousand-dollar draft executed by Waddy Thompson at Little Rock, Arkansas, in November or December of 1867, on Thompson & Cummins, Memphis, Tenn., the proceeds of which said one-thousand-dollars draft were used for the purpose of paying the amount of execution against Fleming hereinbefore referred to, with expenses thereon, to E. H. English. This five hundred dollars was charged on the books of Waddy Thompson & Co. to the individual account of Waddy Thompson December 14th, 1867. The letter of Thompson & Cummins, referred to, is hereto annexed, and marked "Exhibit D." It is the only means I have of identifying this particular five-hundred-dollars draft. The letter states that Waddy Thompson was in Arkansas in November and December, 1867. Said letter, marked "D," refers to a thousand-dollar draft given by Thompson while in Arkansas to secure consign-
172 ment of cotton. No cotton came forward on account of said draft; and my understanding is, as above stated, that the proceeds of said draft were paid to said E. H. English.

To the twenty-second interrogatory he saith: Waddy Thompson obtained possession of the Clear Lake place, Arkansas, in January, 1867, and leased the same to Morris, Smith & Morris. After a disastrous failure on the part of said lessees, Waddy Thompson foreclosed the said lease in January, 1868, through said E. H. English, trustee, and then made an arrangement with William N. Bocock to cultivate the Clear Lake place for the year 1868. The terms of this agreement stipulate that the crops, proceeds, and profits of said place are to be equally divided between William N. Bocock and Waddy Thompson. I hereto annex a copy of said agreement, as prepared by Waddy Thompson, and a copy of the original agreement on the part of Bocock, showing his understanding thereof, said papers being marked "E" and "F," and made part of this deposition. In January, 1869, the place, as per agreement between Thompson and Ober, was surrendered to R. H. Ober. I have no
173 knowledge who controlled said place during the years 1865 and

1866. When I speak of E. H. English being trustee, I mean that when Waddy Thompson leased said place to Morris, Smith & Morris, which was in January, 1867, Waddy Thompson took a deed of trust in the stock and implements and growing crop, to secure him for advances, and also to secure the rent; and in that deed E. H. English was made the trustee, and that was the deed of trust I speak of as having been foreclosed in January, 1868, and the new arrangement was made with Bocock the same month for the ensuing crop-year, 1868.

To the twenty-third interrogatory he saith: Waddy Thompson was entitled to rent of ten thousand dollars from lessees, Morris, Smith & Morris, for the year 1867, which they failed to pay, and, in addition thereto, failed to repay the advances charged them by Waddy Thompson & Co. for the sum of seventeen thousand dollars more. For the year 1868, Waddy Thompson received one-half of net profits accruing from the cultivation of said place, and William N. Bocock received the other half.

To the twenty-fourth interrogatory he saith: E. H. English
174 had nothing to do with the rents of Clear Lake place, either in 1867 or 1868, or at any other time, so far as I know. The place was under the control of Waddy Thompson during 1867 and 1868.

To the twenty-fifth interrogatory he saith: In addition to cancelling the indebtedness of Waddy Thompson & Co. and Thompson & Cummins to R. H. Ober & Co., in consideration of the transfer of the Clear Lake place to himself, R. H. Ober executed, on February 29th, 1868, an obligation, of which the following is a copy:

"LITTLE ROCK, ARK., *Feb. 29th*, 1868.

"I hereby agree to furnish Waddy Thompson through Messrs. Lewis Nanson & Co., for supplies for plantation during this year, as needed, to the extent of two thousand dollars, in pork or other supplies, at cash prices at St. Louis, commissions to be charged.

(Signed) "R. H. OBER."

And which obligation was finally settled between Thompson and Ober on September 29th, 1868, in New York; five hundred dollars were paid in cash, and a new obligation issued by R. H. Ober, to pay fifteen hundred dollars to Waddy Thompson on the first day of November,
175 1868. On September 29th, 1868, Waddy Thompson remitted said obligation for fifteen hundred dollars to his house in New Orleans, directing Charles A. Janvier, his book-keeper, to place said amount of fifteen hundred dollars to his individual credit on the books of Waddy Thompson. That was after the dissolution of the firm of Waddy Thompson & Co. Said fifteen-hundred-dollar obligation was paid October 31st, 1868. I forwarded to R. H. Ober & Co., New York, on October 2nd, 1868, the original obligation of R. H. Ober for two thousand dollars, which was to have been paid in supplies. In addition to said two thousand dollars Thompson made it a condition in the trade between him and Ober that he (Thompson) was to have the use of said place during the year 1868. This negotiation between Thompson & Ober was going on at Memphis and in Arkansas, in January and February, 1868. In fact the negotiation between Thompson and Ober was in agitation in December, 1867. Ober was then in New Orleans and made a strong demand for what the firm of Waddy Thompson & Co. owed him. In January, 1868, Ober went to Memphis to meet Thompson by ap-
176 pointment. That was in the early part of January. About the middle of January they went over to Little Rock to look at the Clear Lake place, and see what could be done about the proposed trade.

Nothing was done at that time, and Ober returned to Memphis, where he awaited the arrival of Thompson. Afterwards, in February, 1868, Thompson and Ober made another trip to Arkansas about the middle of February, and the trade for the place was closed at Little Rock on the 29th of February, 1868, as before stated. On or about the 5th February, 1868, I received by mail from Waddy Thompson, at Little Rock, the letter hereto annexed and marked "Exhibit C" hereto, dated Little Rock, Ark., January 29th, 1868, in which he enclosed a notice for me to serve on Mr. Charles Gallagher, in New Orleans. I served such notice promptly on Charles Gallagher. I have no copy of said notice. According to my recollection, it was to the effect that the consideration for his (Thompson's) notes to said Fleming for the Clear Lake place, held by said Gallagher, had failed, and, I think, the notice went on to state that, in view of that fact, he would not pay said notes. The trade between Thompson and Ober was a private
177 arrangement between them. In the spring of 1868 I was in Memphis, where I saw Thompson, and he told me about the advantageous trade he had made with Ober, or what he called an advantageous trade. I asked him if he had explained all the facts fully to Ober. He said that he had. He told me in the same conversation that he had offered Ober his choice, either to take twelve thousand dollars in money, the full of what Waddy Thompson & Co. and Thompson & Cummins owed him, or else to take said Clear Lake place as it stood without any further recourse on him, Waddy Thompson—and he, said Ober, to take the risk of defending the title to said place—in full payment of what said firms owed him. There were also some other minor considerations, as hereinbefore stated. I learned from Thompson at the same time that it was a part of the arrangement between him and Ober that Thompson was to sell Ober that portion of the Clear Lake place lying in Pulaski County, Arkansas, for five thousand dollars. Thompson said
178 that portion of the place was estimated to be worth five thousand dollars, and, as he had paid six thousand dollars on the total original purchase from Fleming, his understanding was that he had a right to sell and convey that much of the place. And he also said that the had been so arranged that said Ober would get a title to that portion of said lands lying in Prairie County. He said the way was, that the deed to the land sold under execution in Prairie County had been made to E. H. English; and English, at his, Thompson's, request, would convey said lands to said Ober. The foregoing conversation was with Mr. Thompson only; I never had any conversation with Mr. Ober on the subject.

To the twenty-sixth interogatory he saith: I do not know that the said English had anything to do with this transaction, which was an arrangement between Thompson and Ober exclusively.

To the twenty-seventh interrogatory he saith: William N. Bocock cultivated the Clear Lake place for the year 1868, as a partner of Waddy Thompson, under the style of William N. Bocock & Co.

179 To the twenty-eighth interrogatory he saith: The net proceeds of crop of Clear Lake place for 1868 was equally divided between Waddy Thompson and William H. Bocock—Bocock putting in his services against the rent of Waddy Thompson's.

To the twenty-ninth interrogatory he saith: No portion of the rent of Clear Lake place, or crops thereof, were placed to the credit of E. H. English, either for 1867 or 1868.

To the thirtieth interrogatory he saith: Two thousand dollars additional, on Clear Lake place account, was paid by Ober to Thompson in

New York, in September, 1868, on account of obligation therefor executed in Little Rock on 29th February, 1868, as explained hereinbefore in my answer to the twenty-fifth interrogatory.

To the thirty-first interrogatory he saith: William H. Bocock, the person hereinbefore mentioned, in turning over the Clear Lake place to R. H. Ober, in January or February, 1869, sold said Ober, also, a portion of the stock and implements on the place, and for which the said Ober executed his note for six hundred and seventy-seven dollars, due February 1st, 1870. This note was sent to me as agent for Thompson, and
180 I turned over said note to E. H. English as collateral to secure said English and others, on an individual liability of Waddy Thompson, and for which said English and others had become his security, being an attachment bond, in the suit of the Gayoso Bank vs. Thompson. The whole amount of the Ober note, six hundred and seventy-seven dollars, is the exclusive property of Waddy Thompson. I have no knowledge of any sale of stock on said place, from said Bocock to said Ober, in the spring of 1868. The sale just referred to was made in the spring of 1869.

To the thirty-second interrogatory he saith: Waddy Thompson & Co. were seriously embarrassed in the winter of 1867 and '8. The assets were nominally considerably in excess of the liabilities, but were not available, and had no real, tangible value.

To the thirty-third interrogatory he saith: I annex hereto a balance-sheet, made on the 31st of May, 1867, and, also, one dated June 30th, 1868, giving full statements of the condition of said firm on the dates thereof. A part of the liabilities of said firm, as described in the
181 last-named balance-sheet, consists of three notes, past maturity, due R. H. Ober & Co., one for ten thousand dollars, one for five thousand dollars, and one for five thousand dollars—in all twenty thousand dollars—to R. H. Ober & Co. The closing entries on the books of Waddy Thompson & Co. are made by Richard F. Harrison, and by whom the Clear Lake place account and R. H. Ober & Co. account were closed on books of said firm, about July, 1868. Said statements last referred to are made part hereof, marked "H" and "I," and are hereto annexed.

To the thirty-fourth interrogatory he saith: I do not remember any other points of interest.

To the thirty-fifth interrogatory he saith: I am not akin or connected with either party to this suit, and have no interest in this suit.

Cross-examination:

To the first cross-interrogatory he saith: I have distinctly set forth my name, age, residence, and occupation in my answer to the first direct interrogatory of this deposition.

To the second cross-interrogatory he saith: I have known Waddy Thompson since 1864, at Little Rock, Arkansas; R. H. Ober
182 and Charles Gallagher, since 1867, at New Orleans.

To the third cross-interrogatory he saith: I hereby annex verbatim copies of letters of authority executed by Waddy Thompson to myself, dated Memphis, July 28th, 1868, and New Orleans, May 8th, 1869, the same being marked "J" and "K." I have already, in my direct examination, stated the nature of my partnership relations with Waddy Thompson, the books and papers of which are too voluminous to be annexed hereto.

To the fourth cross-interrogatory he saith: I was advised by Waddy Thompson of his purchase of Clear Lake place on my arrival in New

Orleans about March, 1867. I was not present at the purchase made from Fleming, nor have I had any interest whatever in the Clear Lake place. The books of Waddy Thompson & Co. show the transaction, and are in the handwriting of Richard F. Harrison.

To the fifth cross-interrogatory he saith: My information is derived from verbal statements of Waddy Thompson, John T. Fleming, and E. H. English; and I have seen the notes executed by Waddy Thompson to John T. Fleming.

183 To the sixth cross-interrogatory he saith: Fleming was in New Orleans in March, 1867, for several weeks. I do not know of any other time.

To the seventh cross-interrogatory he saith: During Fleming's said stay in New Orleans in March, 1867, his business affairs were the subject of frequent discussion between myself and Waddy Thompson, and we were agreed that it was for the interest of all concerned that Fleming should sell his Clear Lake land-notes to Gallagher and pay Waddy Thompson & Co. at least a portion of the net proceeds thereof. It was for this reason that Thompson aided Fleming in his negotiations with Gallagher.

To the eighth cross-interrogatory he saith: I did not aid Fleming's negotiations with said Gallagher, but Thompson made several efforts in that direction with Fleming. The inducement to Gallagher was that by discounting these Clear Lake notes he would effect a settlement of his claim against Fleming by receiving well-secured notes, based on the Clear Lake purchase by Waddy Thompson.

184 To the ninth cross-interrogatory he saith: When Fleming paid over the six thousand five hundred dollars (part of the money he received from Gallagher) to Waddy Thompson & Co., I issued a receipt and gave Fleming credit therefor on the account due Thompson, Morris & Co. A detailed statement of John T. Fleming's account is hereto annexed, marked "L," in which the said credit of six thousand five hundred dollars appears. I have no copy of the receipt given to Fleming. The origin of the indebtedness of John T. Fleming to Thompson, Morris & Co. was on account of planting-operations of his on Red River.

To the tenth cross interrogatory he saith: The cash payment of six thousand five hundred dollars was made by John T. Fleming on March 23d, 1867, to Waddy Thompson, in the office of Waddy Thompson & Co., No. 188 Gravier street, New Orleans.

To the eleventh cross-interrogatory he saith: In order to show the indebtedness of Waddy Thompson & Co. to R. H. Ober & Co., I hereby annex letters of R. H. Ober & Co., dated August 29, 1867, November 2nd, 1867, November 2nd, 1867, which fully explain the character
185 of said indebtedness. Said papers are marked "M," "N," "O." Said last-mentioned exhibit has attached to it a press-copy of the answer thereto.

To the twelfth cross-interrogatory he saith: The books of Waddy Thompson & Co. have been in my possession since 1868, and are now in my office, No. 57 Carondelet street, New Orleans.

To the thirteenth cross-interrogatory he saith: Said books are here present in my office where this deposition is being taken. They consist of some twenty-eight or thirty large folio volumes, and I cannot suffer said books to go out of my possession without legal coercion. Said books, including those showing accounts between Waddy Thompson & Co. and R. H. Ober & Co., are constantly needed for reference on settlements and in suits pending here in New Orleans.

To the fourteenth cross-interrogatory he saith: In my exhibit of

accounts of Clear Lake place and R. H. Ober & Co., in my examination-in-chief, I have set out in detail each item, making up the respective accounts and the closing entries thereof, and they include all entries relating to said accounts on the books of Waddy Thompson & Co.

186 To the fifteenth cross-interrogatory he saith: R. H. Ober and J. B. Cates composed the firm of R. H. Ober & Co., which firm was dissolved in the latter part of 1868.

To the sixteenth cross-interrogatory he saith: The name of Elbert H. English does not appear on the books of Waddy Thompson & Co., as a party concerned in the Clear Lake place in any manner whatever.

To the seventeenth cross-interrogatory he saith: There is no such entry on the books of Waddy Thompson & Co., connecting E. H. English with the Clear Lake place, except exclusively as attorney or agent.

To the eighteenth cross-interrogatory he saith: The books and correspondence of Waddy Thompson & Co., including my own letters to said English, show that he was always considered as the attorney and confidential agent of Waddy Thompson in Arkansas. He had exclusive charge of all the legal business of the *legal business of the* firm from 1865. His law-firm has now several suits for Waddy Thompson.

To the nineteenth cross-interrogatory he saith: I have annexed in my examination-in-chief the several drafts made by E. H. English

187 for his own account or for account of others. There is another draft drawn by E. H. English, dated May 25th, 1867, for one hundred and ninety $\frac{41}{100}$ dollars, being for the proceeds of two bales of cotton, which had been shipped to Waddy Thompson & Co., to be sold for account of said English, said draft being for the net proceeds of the sale of said two bales of cotton. Said draft is not exhibited herewith, because it does not appear to have any connection with the matters enquired about in this interrogatory. I mention this last draft because I had overlooked it in giving my examination-in-chief. It has no connection with the business or transactions of the Clear Lake place.

To the twentieth cross-interrogatory he saith: I have exhibited in my examination-in-chief the bill of fees as made by E. H. English, the settlement thereof having been made by Waddy Thompson. I have not in my possession any account rendered by E. H. English for fees. Waddy Thompson's draft in his favor, heretofore exhibited by me, shows that it was given on account of fees.

To the twenty-first cross-interrogatory he saith: I received E. H. English's letter, dated Little Rock, September 5th, 1867, containing

188 full details. I acknowledged the receipt of this letter to English on September 15th, 1867, and on the same day notified Thompson of the contents thereof, by letter addressed to him at Memphis, Tennessee. I also know the fact enquired about from E. H. English in person. About the last of July, 1868, I was in Little Rock, Ark., and had a conversation with E. H. English, who told me about his purchase of the Clear Lake place under execution against Fleming, in August, 1867. He explained to me the reason why he had the deed from the sheriff made to him instead of to Waddy Thompson, which was that the planting-operations of the Clear Lake place had been attended with such heavy losses that he feared it would crush Thompson down, and he took the deed in his own name in order to protect Thompson's interest.

To the twenty-second cross-interrogatory he saith: I think that in my answer to the twenty-first cross-interrogatory I have stated everything I could state in answer to this interrogatory, and have nothing further

to state by way of answer. Said conversation also related to other matters not here enquired about.

189 To the twenty-third cross-interrogatory he saith: I hereby annex the letter of E. H. English, dated Little Rock, Ark., September 5th, 1867, marked "P," being the same letter heretofore referred to by me. I have in my possession other letters of the said English, but said letter marked "P," is the only one on the subject enquired about.

To the twenty-fourth cross-interrogatory he saith: At Waddy Thompson's request I have sent to him at Memphis, about a year ago, all drafts made by Thompson & Cummins, and his own drafts on the firm of Waddy Thompson & Co. I am therefore unable to annex a five-hundred-dollar draft made by Thompson & Cummins December 12th, 1867, at Memphis, Tennessee, and which sum was to re-imburse Thompson & Cummins for one half of a thousand-dollar draft made by Waddy Thompson in Arkansas, in November or December, 1867, and which draft, or the proceeds thereof, was placed with E. H. English, in order to pay amount of execution of eight hundred and forty-four $\frac{70}{100}$ dollars, and costs, accruing out of judgment against John T. Fleming, hereinbefore

190 specially referred to. This five-hundred-dollars draft of Thompson & Cummins, December 12th, 1867, is charged to the individual account of Waddy Thompson, on the books of Waddy Thompson & Co. My information on this subject is derived from conversations had with Waddy Thompson and E. H. English.

To the twenty-fifth cross-interrogatory he saith: I conducted most of the correspondence of Waddy Thompson &. Co. with Morris, Smith & Morris, lees'ees of Clear Lake place, in 1867. Also with William H. Bocock & Co., who cultivated the place in 1868. By special authority of Waddy Thompson, I repaired to Arkansas in May, 1869, as agent for Waddy Thompson, and made a settlement of his partnership with Bocock for 1868, dividing proceeds of crop of 1868, on Clear Lake place, between Waddy Thompson and William H. Bocock. The statement of original settlement thereof is hereto annexed, and marked "Q," and "R." I have no personal knowledge of who had possession of the place during 1865 and 1866. The place was taken possession of by R. H. Ober in January or February, 1869. I saw him there in May, 1869, in possession of the place.

191 To the twenty-sixth cross-interrogatory he says: I derived my knowledge from the books, letters, and papers of Waddy Thompson & Co., from my personal knowledge of and interviews with the parties concerned, and I have personally transmitted to Waddy Thompson, at Memphis, the proceeds and profits accruing from the cultivation of the Clear Lake place, by Wm. H. Bocock & Co., for the year 1868, after my settlement of accounts with Bocock. I informed E. H. English, of Little Rock, as to the amounts of profits made, but did not account to him for anything whatever on account thereof.

To the twenty-seventh cross-interrogatory he saith: The said English never received any rents or profits from said place, either for 1867 or 1868. He never asked any such, nor were any such ever tendered to him, so far as I know.

To the twenty-eighth cross-interrogatory he saith: I have seen in Waddy Thompson's possession, and in the to me well-known handwriting of R. H. Ober, a receipt in full of all demands whatever

192 of claims due R. H. Ober & Co. from Waddy Thompson & Co., New Orleans, and Thompson & Cummins, Memphis, Tennessee, exceeding twenty-seven thousand dollars ($27,000) in amount, and which receipt was dated February 29th, 1868, to the best of my recollection.

In addition to said receipt in full to Waddy Thompson & Co. & Thompson & Cummins, R. H. Ober executed his personal obligation, a copy of which I have given in my examination-in-chief, to pay an additional two thousand dollars to Waddy Thompson in supplies, at cash valuation. This paper was in my possession for some months, and after the amount was settled with Waddy Thompson personally, in New York, in September, 1868, I returned the original obligation to R. H. Ober & Co. on October 2nd, 1868, as will more fully appear by a press copy of my letter of New Orleans, October 2nd, 1868, hereto annexed and marked "Exhibit S."

To the twenty-ninth cross-interrogatory he saith: I know this matter of purchase of R. H. Ober, only as informed in conversations had with Waddy Thompson and E. H. English. I know that said
193 English was consulted about the matter of such purchase by Ober, from a conversation before mentioned with said English, in Little Rock, about the last of July, 1868, and also as to the payment therefor. In that conversation he told me that Waddy Thompson desired him to make a deed of the Clear Lake place to his, Waddy Thompson's, wife, or to his mother-in-law, Mrs. Wilkerson, and that he, English, declined to do either. It was then that Thompson suggested making the deed to Ober, and in that consideration stated that Ober had taken the trust-deed of Morris, Smith & Morris, lessees, drawn by English himself, from Waddy Thompson, and having made large advances thereon in good faith, and as Thompson further represented that said transfer to Ober would be of material advantage and benefit to him, Waddy Thompson, English agreed and really executed the deed to said R. H. Ober, without receiving himself any consideration therefor whatever, either from Waddy Thompson or R. H. Ober; that he knew nothing of the transactions, or of any private agreements
194 or contracts between Ober and Thompson; that at Ober's request he had inserted in the deed of sale to Ober, the consideration of twenty-seven thousand five hundred dollars; that Ober stated that the insertion of such a sum would properly exhibit the value of the place and enable him to negotiate for some necessary advances thereon for working the place. In the same conversation English told me that pending the negotiation between himself and Ober, about the conveyance of the Clear Lake place from him to Ober, he had cautioned Ober not to tell him about any contract or agreement or business between him, said Ober, and Waddy Thompson, and that he did not want to know anything about their business.

To the thirtieth cross-interrogatory he saith: William H. Bocock cultivated the place, the Clear Lake place, in 1868. I know him personally. I conducted the correspondence in part with him, compromised some differences between him and Waddy Thompson, in reference to their copartnership contract, and made the final settlement of Clear Lake place, dividing the crop and alternate profits of and for the
195 year 1868 between Waddy Thompson and William H. Bocock.

To the thirty-first cross-interrogatory he saith: My knowledge as to who enjoyed the rents of Clear Lake place for 1867 and 1868 is personal and direct, as stated in foregoing answer, and to the twenty-eighth direct interrogation. I personally transmitted the results thereof to Waddy Thompson, at Memphis.

To the thirty second cross-interrogatory he saith: No portion of the rents or profits of Clear Lake place for 1867 or 1868 were placed to the credit of E. H. English, directly or indirectly.

To the thirty-third cross-interrogatory he saith: I have annexed all

the papers in my possession referring to the additional sum of two thousand dollars paid by Ober to Thompson, on account of the Clear Lake place, as stated in detail in my answer to the twenty-eighth cross-interrogatory and to the thirtieth interrogatory-in-chief.

To the thirty-fourth cross-interrogatory he saith: The note referred to in the thirty-first direct interrogatory for six hundred and seventy-seven dollars, signed by R. H. Ober, to order of Waddy Thompson, is now in
196 possession of E. H. English for collection, as collateral proceeds thereof, to be applied to liquidation of Waddy Thompson's individual liabilities; balance, if any left, payable to Waddy Thompson. I have put said note into the hands of E. H. English for this purpose, through Charles A. Janvier. I received the note from Bocock, and sent it to New Orleans, and from New Orleans it was sent to English by C. A. Janvier, as stated, and my object in placing this note with English was to secure him and cosigners on a bond for Thompson, so far as I had the power to do so. I annex hereto, marked "Exhibit T," a copy of a receipt of E. H. English for certain collaterals left by me with him, which includes said note of R. H. Ober, and shows for what purpose the same was left in his hands.

To the thirty-fifth cross-interrogatory he saith: My information concerning the financial condition of Waddy Thompson & Co. is direct, from personal knowledge and primary sources. A schedule of debts and credits of the firm, at two different dates, I have annexed to my examination-in-chief to thirty-third direct interrogatory.

To the thirty-sixth cross-interrogatory he saith: My knowledge
197 as to the debts due by Waddy Thompson & Co. to R. H. Ober & Co. is direct, personal, and from original documents heretofore annexed to my deposition. I have already answered as to the assets and liabilities of the firm of Waddy Thompson & Co.

To the thirty-seventh cross-interrogatory he saith: I do not remember any other matter of interest to the parties to this suit.

To the thirty-eighth cross-interrogatory he saith: I am not interested in the result of this suit. I am not connected with either party to this suit. I never had any interest of any kind in the Clear Lake purchase, the lease, profits, or control thereof being the individual business of Waddy Thompson, about which I was not consulted, although the funds of Waddy Thompson & Co. were drawn upon for the first payment, also the advances of about seventeen thousand dollars to Morris, Smith & Morris, lessees. I am not interested in the result of this suit in any way.

To the thirty-ninth cross-interrogatory he saith: I have in all cases given the sources of my knowledge and information, so far as it has been possible for me to do so, and have stated with reasonable
198 particularity all the facts connected therewith; the firm being now in liquidation, since June 1868, the papers have become disarranged or disturbed. I notice that I cannot find some letters written by Mr. Thompson, from Memphis, written in 1868, which, if they could be found, would probably throw some light on these transactions.

WM. B. MORRIS.

Subscribed and sworn to before me this thirteenth day of February, A. D. 1871.

CHAS. S. RICE,
U. S. Comm'r, Dist. of La.

Deposition of Charles A. Janvier.

To the first interrogatory he saith: My name is Charles A. Janvier. I reside in the city of New Orleans. I am about forty years of age, and am by occupation corresponding clerk of Lehman, Newgrass & Co.

To the second interrogatory he saith: I am acquainted with all three of them, but very slightly with Mr. Ober.

To the third interrogatory he saith: I went into Waddy Thomp-
199 son & Co.'s employment about February, 1867, and remained in his employ, I should think, about three months. I was then out of his employ for a time, and again went into his employ about the first of September, 1867. I am speaking from memory entirely. I remained in his employ till about the first of May, 1869. During the first engagement herein mentioned, I was for a part of the time attending to correspondence of Waddy Thompson & Co., and part of the time travelling in the West, for the purpose of purchasing produce. Up to June, 1868, when the firm was dissolved, my principal business was assisting William B. Morris in the insurance business. After said dissolution I kept Waddy Thompson's books.

To the fourth interogatory he saith: I do not know.

To the fifth interrogatory he saith: I do not know anything about it; I have heard it spoken of, but do not know anything definite about it.

To the sixth interrogatory he saith: It must have been somewhere about March, 1867.

To the seventh interrogatory he saith: I knew of the transaction
200 enquired about by general knowledge, being in the office, and hearing it talked about, but I do not remember any particulars.

To the eighth interrogatory he saith: I did not.

To the ninth interrogatory he saith: I do not know.

To the tenth interrogatory he saith: My recollection is, without referring to the books, that it was about twenty thousand dollars.

To the eleventh interrogatory he saith: I have nothing to do with said books, and no access to them unless I should ask for it.

To the twelfth interrogatory he saith: My recollection is that said indebtedness was paid off by Thompson letting Ober have the plantation referred to. I was not book-keeper for the firm at that time, and make this answer without reference to their books.

To the thirteenth interrogatory he saith: I cannot do so for the reasons aforesaid.

To the fourteenth interrogatory he saith: I do not know except by general knowledge; I understood that R. H. Ober was the head of the firm of R. H. Ober & Co., doing business in New York.

201 To the fifteenth interrogatory he saith: I cannot answer that question for want of information.

To the sixteenth interrogatory he saith: I cannot say.

To the seventeenth interrogatory he saith: All I know is that Judge English acted as his attorney there.

To the eighteenth interrogatory he saith: I cannot say.

To the nineteenth interrogatory he saith: I do not know.

To the twentieth interrogatory he saith: I have no precise information on this subject, and no personal knowledge of it.

To the twenty-first interrogatory he saith: I cannot say.

To the twenty-first & a half interrogatory he saith: I cannot say.

Tothe twenty-second interrogatory he saith: My understanding was that Morris, Smith & Morris were in possession of the place, as renters,

& afterwards William H. Bocock, on shares with Thompson, in the years 1867 and 1868.

To the twenty-third interrogatory he saith: All I know is, that
202 at Thompson's request I drew up an agreement between Thompson and Bocock, about the Clear Lake place, for Thompson to send to Bocock, but I do not think Bocock ever signed it.

To the twenty-fourth interrogatory he saith: I do not know.

To the twenty-fifth interrogatory he saith: All I know is my general understanding that Ober took the place of Thompson in payment of the debt of Waddy Thompson & Co. to R. H. Ober & Co.

To the twenty-sixth interrogatory he saith: I do not know.

To the twenty-seventh interrogatory he saith: I think it was Thompson and Bocock.

To the twenty-eighth interrogatory he saith: I know the cotton came here, some of it to Waddy Thompson & Co., and was sold, but whether all of it or not, I do not know. The proceeds of the cotton were credited to Wm. H. Bocock & Co., that is, to Thompson and Bocock, and I suppose Varden, as one of the company.

To the twenty-ninth interrogatory he saith: My recollection is that they did not.

To the thirtieth interrogatory he saith: That I do not know. I
203 recollect that Ober was to furnish an amount of supplies, two thousand dollars' worth, but I do not know why.

To the thirty-first interrogatory he saith: I recollect that Thompson had a note of Ober's for six hundred and seventy-seven dollars, which afterwards, at the request of Mr. Morris, I sent to Judge English, at Little Rock, Arkansas.

To the thirty-second interrogatory he saith: When I first went with Waddy Thompson & Co., in February, 1867, they were apparently easy in their affairs, and some time afterwards, say from March, 1867, to January, 1868, they were embarrassed. I should say that their embarrassment began about March, 1867, and continued to January, 1868.

To the thirty-third interrogatory he saith: I am unable to say.

To the thirty-fourth interrogatory he saith: I do not know of anything else.

To the thirty-fifth interrogatory he saith: I am not.

Cross-examination:

To the first cross-interrogatory he saith: That I have already done.

To the second cross-interrogatory he saith: I became acquainted
204 with Mr. Gallagher at New Orleans, some ten or fifteen years ago. I became acquainted with Waddy Thompson in New Orleans, in 1865. I was introduced to Mr. Ober in Waddy Thompson & Co.'s office, in, I think, 1867.

To the third cross-interrogatory he saith: I have no papers.

To the fourth cross-interrogatory he saith: I have already answered that I have no knowledge on the subject.

To the fifth cross-interrogatory he saith: I have already said that I know nothing of it, except my general information that Ober took the place of Waddy Thompson for the debt.

To the sixth cross-interrogatory he saith: Only once that I recollect.

To the seventh cross-interrogatory he saith: I only know of it from being in the office of Waddy Thompson & Co., and hearing it talked about at the time.

To the eighth cross-interrogatory he saith: I did not aid him.

To the ninth cross-interrogatory he saith: I have no such receipts. I suppose Mr. Fleming has them.

To the tenth cross-interrogatory he saith: I do not know.

205 To the eleventh cross-interrogatory he saith: I have stated it merely from recollection, and so answer now.

To the twelfth cross-interrogatory he saith: I suppose Mr. Morris has them.

To the thirteenth cross-interrogatory he saith: I have not got them.

To the fourteenth cross-interrogatory he saith: I cannot do so, not having the books. I was not the book-keeper of Waddy Thompson & Co., and my engagements now are such that I have not time to make such examination of said books.

To the fifteenth cross-interrogatory he saith: I do not know, except as hereinbefore stated.

To the sixteenth cross-interrogatory he saith: As I have stated, my recollection is that the name of E. H. English does not appear upon the books of Waddy Thompson & Co., as the owner of the Clear Lake place, or as interested therein.

To the seventeenth cross-interrogatory he saith: I have stated that I do not know of any such entry on the books of Waddy Thompson & Co.

To the eighteenth cross-interrogatory he saith: I have stated that all I do know is that Judge English acted in Arkansas as the attor-

206 ney of Waddy Thompson, but whether he held Thompson's power of attorney I do not know. I know that from Waddy Thompson.

To the nineteenth cross-interrogatory he saith: I have not spoken of any drafts drawn by Mr. English, and have none such in my possession.

To the twentieth cross-interrogatory he saith: I have none such bills of fees in my possession. I am sure that Judge English was paid fees by Waddy Thompson & Co.

To the twenty-first cross-interrogatory he saith: I do not know anything about that.

To the twenty-second cross-interrogatory he saith: I have already said that I do not know anything about it.

To the twenty-third cross-interrogatory he saith: I have no such letters.

To the twenty-fourth cross-interrogatory he saith: I have no such draft.

To the twenty-fifth cross-interrogatory he saith: I know it from correspondence, from the entries on the books, and the statements of Thompson and William B. Morris. I wish to confine this answer to the two years when the place was cultivated by Morris, Smith & Morris, and by William H. Bocock & Co.

207 To the twenty-sixth cross-interrogatory he saith: I have stated that I knew that some of the cotton came here and that the proceeds of it were credited to Wm. H. Bocock & Co.

To the twenty-seventh cross-interrogatory he saith: I do not know that he did. I have not made any such statement.

To the twenty-eighth cross-interrogatory he saith: I heard Mr. Thompson say that being in company with Mr. Ober, and having with him a large amount of money, ten or twelve thousand dollars, as I recollect, he offered Ober the money or the place for the debt, telling him of the flaw in the title, and that Ober took the place in preference to the money. He made that statement in New Orleans, in the office of Waddy Thompson & Co. He did not make said statement to me personally, but there were other persons present at the time, I think; but I

cannot state positively that Mr. Cummins and Mr. Morris were present at the time Thompson made this statement.

To the twenty-ninth cross-interrogatory he saith: I have not said that I did not know.

To the thirtieth cross-interrogatory he saith: His name was
208 William H. Bocock, and I know the fact from correspondence with him.

To the thirty-first cross-interrogatory he saith: The cotton came here to be sold, and I knew it from attending to the business.

To the thirty-second cross-interrogatory he saith: They did not go to his credit.

To the thirty-third cross-interrogatory he saith: Such knowledge as I have stated I had, I derived from the books and correspondence of Waddy Thompson.

To the thirty-fourth cross-interrogatory he saith: I do not know anything about the note since I sent it to Judge English, as hereinbefore stated.

To the thirty-fifth cross-interrogatory he saith: I got it from conversations with Waddy Thompson and W. B. Morris. For reasons before stated, I am unable to attach the schedule called for in this interrogatory.

To the thirty-sixth cross-interrogatory he saith: I have stated it from general recollection of the business of Waddy Thompson & Co., and as the schedules called for, my answer is the same as to the preceding interrogatory.

To the thirty-seventh cross-interrogatory he saith: I do not know of any, that I recollect.

209 To the thirty-eighth cross-interrogatory he saith: Nothing whatever.

To the thirty-ninth cross-interrogatory he saith: I have endeavored to do so in each instance.

CH'S A. JANVIER.

Subscribed to and sworn to before me this fourteenth day of February, A. D. 1871.

CHAS. S. RICE,
U. S. Comm'r, Dist. of La.

Interrogatories for plaintiff.

Interrogatories for plaintiff.

1. State your name, age, residence, and occupation.
2. Are you the plaintiff in this suit?
3. State whether you ever had any conversation with the defendant, Waddy Thompson, in reference to the subject-matter of this suit; and if so, state all that was said in such conversation as well as you can recollect.

WATKINS & ROSE.

210 *Cross-interrogatories.*

X-interrogatories.

1st. (a^1.) Be very careful in stating your name; give it in full.
(a^2.) Be particular in stating your age; give it exactly.

(a^3.) Be very precise in telling where you live.

(a^4.) Be accurate in telling your occupation.

2d. If you should answer, in response to the 2d interrogatory above, that you are not the plaintiff in this suit, please state who and what you are.

3d. In stating any conversations you should have had with Waddy Thompson, be so kind as to tell who was present at such conversations, when they were had, and where they were had, and as to all these matters be very particular; and then tell how any such conversations ever took place between you and the aforesaid Waddy.

GARLAND & NASH, *for Def'ts.*

Deposition of Charles A. Gallagher.

To the first interrogatory he saith: My name is Charles Gallagher. I am sixty-one years of age. I reside in the city of New Orleans, State of Louisiana, and am by occupation a commission merchant and cotton factor.

To the second interrogatory he saith: I am the complainant in this suit.

To the third interrogatory he saith: John T. Fleming, residing in Arkansas, and ow'ing and cultivating the Clear Lake place, in Prairie and Pulaski Counties, was indebted to me in the year 1867 to the amount of twenty-four thousand three hundred and sixty-seven $\frac{64}{100}$ dollars, ($24,367.64,) exclusive of interest for advances and indebtedness accrued previous to the late civil war, and for which amount I held his notes due March 13th, 1863, and April 13th, 1863, amounting to the above-named sum of twenty-four thousand three hundred and sixty-seven $\frac{64}{100}$ dollars, ($24,367.64,) exclusive of interest. In the spring of that year, 1867, hearing that Fleming had sold his Clear Lake place, I went from New Orleans to Franklin, Tennessee, where he then
212 was, or near there, to see him about his debt to me. He then and there informed me that he had sold his place (Clear Lake place) to Waddy Thompson, (one of the defendants in this suit,) and also of the terms of the sale; and also told me he had reserved some of the notes of Thompson, being the earliest of them to become due, for me. I asked him for them, and he informed me that he could not let me have them until he came down to New Orleans, which he said would be in the course of ten days from that time. I returned to New Orleans, and went to see Waddy Thompson, then doing business in New Orleans, next door to me, about this Clear Lake purchase, and he informed me that he had bought the place of Fleming, and told me the terms, the same as Fleming had done, which were, in substance, that in January previous, in that year, he had bought the place for sixty thousand dollars, ($60,000,) and given Fleming his notes therefor, for six thousand dollars ($6,000) each, payable in ten annual instalments, without interest, and due on the first day of March of each year, and had
213 taken a deed from Fleming, in which he, Fleming, had reserved a lien on said plantation, to secure the payment of said notes. Said Thompson was well aware of the indebtedness of Fleming to me, and told me in that conversation that I would do well to get those notes of his held by Fleming. He talked as though he had made a good trade, and told me he had rented out the place that year, 1867, for some amount I do not remember, but it was, I think, twelve thousand dollars, ($12,000,) or between ten and twelve thousand dollars. I understood from Thompson, in that conversation, that said Fleming then held nine

of said notes, he, said Thompson, having paid the first one, due March 1-4, 1867. Soon afterwards, and according to appointment, Fleming came to New Orleans, and called to see me about our business. I told him I wanted the notes first due, and he then left my office and went in next door to see Waddy Thompson, and returned, saying these notes were about all he had to raise some money on, which he needed, and if he let me have the first notes, he could do nothing with those falling due so long
214 off, and proposed to me to discount all of the notes. I took time to consider of this until next morning. During these negotiations I was in the office of Waddy Thompson & Co., where I saw Thompson. Thompson told me I had better take all the notes, as Fleming owed other parties in New Orleans, and it was the best I could do. I wanted a change made in the notes, so as to make them payable in New Orleans. Thompson objected to this, because the notes might get on the market, and with persons not understanding the transaction it would injure his credit, and Fleming also objected, because it might impair or in some way affect his vendor's lien on the land, and would not agree to any change without first consulting his attorney, Judge English, of Little Rock, Arkansas. The next morning I concluded to take all of the notes. I did not charge any interest on the notes of Fleming to me, at which he expressed gratification. After deducting the face of his notes to me, as stated, twenty-four thousand three hundred and sixty-seven $\frac{64}{100}$ dollars, ($24,367.64,) from the proceeds of the notes of
215 Thompson, discounted at the rate of eight per cent. per annum, I paid the residue of such proceeds to said Fleming in money, and gave him up his notes held by me. Thompson was cognizant of this entire transaction as it progressed, and told me he received a part of such proceeds from Fleming, being the money I had paid him for said notes. Subsequently, in May, 1867, at about the time that W. Thompson & Co. moved their office from Gravier street, Thompson called on me, and said he was tired of the cotton business, and wished to go into the insurance business, and wanted me to lend him twenty thousand dollars ($20,000) for that purpose. He offered to give me his note for the amount, and secure it by transferring to me a deed of trust executed by Morris, Smith & Morris, who had rented the Clear Lake place for that year, to secure the rent and advances to a large amount, and some other securities he held for advances on cotton, amounting in all, he said, to one hundred thousand dollars, and which he represented to be good security. I did not lend him the money. On the 6th
216 of February, 1868, William B. Morris, of this city, and a member of the firm of Waddy Thompson & Co., delivered to me a notice from said Thompson, dated at Little Rock, Arks., January 29th, 1868, a true copy of which is hereto annexed and made part hereof, marked "A;" and a few days afterward I received by mail a letter from said Thompson, dated Little Rock, February 4th, 1868, which is hereto annexed and made part hereof, marked "B." These communications were the first intimation I had of any doubt or difficulty about the matter referred to. Subsequently, in the spring, and, as near as I can recollect, in April, 1868, the note of Thompson for six thousand dollars, ($6,000,) due 1-4 March, 1868, having been protested, said Thompson called in my office to see me in regard to said notes. He came to tell me about what he called all these disasters. He said that the Clear Lake place had been sold under execution on a judgment against Fleming, older than the deed from Fleming to him, and was bought by Judge English, and which was the first I had heard of that transaction.
217 He said that Fleming had gone to Tennessee, and with his money, (that is, as I understand, money obtained from him,)

had bought out the interest of his, Fleming's, sisters, and that his, Fleming's, father had conveyed to his, Fleming's, wife the farm where they lived, of twelve hundred acres, near Franklin, Tennessee, and that Fleming was going into bankruptcy. Thompson said that the heart of Clear Lake place, about three thousand acres of it, and the most valuable land on the place, had been sold under execution, and he did not consider himself liable on his notes to Fleming, and he would not pay them. I told him I thought he was liable and that I should sue him. The next time I saw said Thompson was under the following circumstances: I had brought suit against him in the fifth district court of New Orleans, on one of his six thousand dollar notes aforesaid, past due, which he defended by setting up a failure of consideration, and I obtained a judgment against him in said suit on the 11th of June,
218 1869, and soon after caused process of execution to be issued on it, which was levied on certain assets which said Thompson had deposited with Pike, Brother & Co., bankers, in this city, New Orleans, as collateral, amounting nominally to about thirty-three thousand dollars, ($33,000,) and including among them a note of Perry Fuller, due 7–10 May, 1869, for ten thousand dollars, ($10,000.) Thompson was in New York at the time, and came to New Orleans soon after, as well as I remember, in July, 1869. He came to my office, told me he had come to see me; said he had been to see Mr. Pike; that the service of the execution on Pike, Brother & Co. was something he had not expected; that it was a hard blow to him, and injured his credit, and would prevent him from going on in business. He said that Mr. Pike had told him that if I would release the process of execution, he would turn over those assets to him, Thompson, but otherwise he could not do so. He was, or so expressed himself, especially desirous to get control of the note of Perry Fuller. He said that Perry Fuller was then in the city, and would pay him the money on this note, but would
219 not pay me. He then said he had something to say to me, but it was not to be used as evidence against him. I asked him what that was. He said that if I would release that levy of execution, so that he could get control of those assets levied on or attached, he would go before a notary public, in this city, and make affidavit to certain facts which would be of advantage to me. He said that he and Judge English, at Little Rock, were the only persons who could put me right on the goose. I asked him what that meant. He replied, to enable me to get my rights in regard to those Clear Lake notes, and my vendor's lien. He said there were some irregularities up in Arkansas about the sale to Ober. He said Ober was a fool; that he had offered him twelve thousand dollars ($12,000) in money for the Clear Lake place with all the difficulties about it, of which he apprized him, and Ober, with his eyes open, had chosen to take the place. I told him that if I could secure my vendor's lien on the Clear Lake place, I would be satisfied with it, as I wished to keep out of law. Thompson then asked me
220 to sign an instrument for the release of those assets, which I declined to do at that time, because I wished to consult some lawyer familiar with the laws of Arkansas, but it was a season of the year when they did not usually come here, and I could find none in the city; the affidavit was not made. Afterwards, in October or November, 1869, when I went up to my plantation in Arkansas, below Memphis, I was to Memphis, where I saw Thompson, and asked him if he was then willing to make that affidavit, and that we could get a lawyer there. He said no; that I had pursued him as if there had been no such proposition; that he

could not get those papers in New Orleans when he wanted them, and now I might help myself. During the same conversation he said that Ober had been to Memphis to see him, and wanted him to give him (Ober) a written statement that when he (Ober) bought the place, he knew nothing of any defect in the title, and that he was an innocent purchaser. He (Thompson) said he told Ober he would not do
221 it, and if he was put on the block as a witness, he would have to tell all he knew about it. I never had any conversation with Thompson in any way relating to said Clear Lake place, or his notes to Fleming held by me, or the subject-matter of this suit other than as hereinbefore stated, and I have stated all that occurred in such conversations as near as I can recollect.

Cross-examination:

To cross-interrogatory 1st (*a* 1) he saith: I have stated my name in full.

To cross-interrogatory 1st (*a* 2) he saith: I am sixty-one, going on sixty-two years of age.

To cross-interrogatory 1st (*a* 3) he saith: I have stated where I live.

To cross-interrogatory 1st (*a* 4) he saith: I have stated my occupation.

To the second interrogatory he saith: I am complainant in this suit.

To the third cross-interrogatory he saith: As to the conversations mentioned in my examination-in-chief, between myself and Waddy Thompson, the first conversation was, as near as I can state, between the 10th and 15th of March, 1867, in the office of W. Thompson
222 & Co., 188 Gravier street, New Orleans, and there were several persons in the office at the time; but the conversation was between Thompson and myself. Some of them were Mr. Janvier, Mr. Morris, and Mr. Pittman, who were there, but I do not know or suppose they heard the conversation. The next conversation spoken of was on or about the 20th of March, 1867, at the time Fleming came here, and I discounted Thompson's notes. This negotiation and these interviews occurred in my off., 190 Gravier street, when Samuel V. Mitchell, my clerk, now a clerk in the house of T. H. & J. M. Allen & Co., of this city, was present, and during the conversation in the office of W. Thompson & Co., his partner, Mr. Morris, their clerk, Mr. Janvier, and Mr. Pittman, (a tobacco merchant, who had a desk in the office,) were there, but I do not know or suppose they heard the conversation. When I was about to discount the notes, I sent in next door for Thompson to come into my office, and at the conversation then ensuing, Fleming was present, also said Mitchell, and I suppose they both heard what was said. The conversation in which Thompson wanted me to
223 loan him twenty thousand dollars for his insurance business, occurred in my cotton-room, and no one else was present that I remember. At the conversation in April, 1868, (I am unable to state the precise day,) in my office, when Thompson told me about the Clear Lake place having been sold under execution and bought by English, &c., I do not remember that any other person was present. At the conversation in my office, in July, 1869, (I am unable to state the precise day,) when Thompson wanted me to release those assets, &c., and proposed to make an affidavit, &c., my son, M. S. Gallagher, was present, and heard the conversation. At the conversation in Memphis, in the fall of 1869, (I am unable to state the precise day,) when I asked Thompson if he was then willing to make affidavit, and he declined

doing so, &c., there were several persons about in the place where we met, but they were all strangers to me. I do not know who they were, nor do I suppose they heard the conversation between said
224 Thompson and myself. I do not know that I could say anything more than I have said, in my examination-in-chief, as to the attendant circumstances, and how said conversations came to take place.

CHAS. GALLAGHER.

Sworn to and subscribed before me this twentieth day of February, A. D. 1871.

CHAS. S. RICE,
U. S. Comm'r, District of La.

Deposition of Richard F. Harrison.

To the first interrogatory he saith: My name is Richard F. Harrison. I am fifty-eight years of age. I reside in Harrison County, in the State of Mississippi. I am at present a member of the legislature of that State, now in session at Jackson. My general profession and occupation is that of an accountant.

To the second interrogatory he saith: I am acquainted with all of them.

To the third interrogatory he saith: I was book-keeper of Waddy Thompson & Co., at New Orleans, at a salary of three thousand dollars a year, from some time in March, 1866, until the first day of July, A. D. 1867.

225 To the fourth interrogatory he saith: The date of the purchase I cannot give of my own knowledge. The books of Waddy Thompson & Co. show that the first payment was made by a draft drawn by J. T. Fleming to his own order, on Waddy Thompson & Co., for six thousand dollars ($6,000) payable 1–4 March, 1867, which was paid at that date.

To the fifth interrogatory he saith: I have no personal knowledge of the terms and conditions of such purchase beyond what may appear on the books here. I know, in general terms, that there were other deferred payments to be made by Thompson for said place.

To the sixth interrogatory he saith: Some time in the month of March, 1867, near the middle of said month, as well as I recollect.

To the seventh interrogatory he saith: Nothing of my own personal knowledge further than this: that about the time of the transaction enquired about, Mr. Gallagher called on me for information regarding the Clear Lake purchase. Thompson told me he had made a good
226 trade, and that the rents of the place would pay in six years all he would have to pay in nine years. Mr. Gallagher asked me about that, and I referred him to Mr. Thompson for more definite information.

To the eighth interrogatory he saith: I took no part in any negotiation about the discounting of said notes.

To the ninth interrogatory he saith: On the 23rd day of March, A. D. 1867, John T. Fleming paid into the house of Waddy Thompson & Co., in New Orleans, sixty-five hundred dollars ($6,500) on his Red River planting account, kept with Thompson, Morris & Co., at Shreveport, Louisiana, and which appears on the books of the New Orleans house, to the credit of Thompson, Morris & Co., for said account. From all that occurred at the time, it was my understanding that said sum of sixty-five hundred dollars ($6,500) was paid of the money received by Fleming from Mr.

Gallagher; but I did not see him receive the money from Gallagher, and cannot state positively that it was part of the same money received on the discount of said notes.

227 To the tenth interrogatory he saith: I did not keep the books of Waddy Thompson & Co. later than July 1st, 1867.

To the eleventh interrogatory he saith: I have. They are here before me, in the office of Wm. B. Morris & Co., New Orleans.

To the twelfth interrogatory he saith: I have examined the paper marked "Exhibit A" to the deposition of William B. Morris, in this case, and compared it with the books of said firm of Waddy Thompson & Co., at New Orleans, and find the same to be correct as to the amount of the indebtedness of Waddy Thompson & Co., and of Thompson & Cummins, at Memphis, Tennessee, to R. H. Ober & Co., and how the same was paid off, and as to the dates of the several entries as therein stated.

To the thirteenth interrogatory he saith: Said closing entries here enquired about are embraced in said Exhibit A, here again referred to and made part of this deposition.

To the fourteenth interrogatory he saith: He was. Said firm did business in New York. The style of their firm in New Orleans was Ober, Otwater & Co.

228 To the fifteenth interrogatory he saith: The name of Elbert H. English nowhere appears on the books of Waddy Thompson & Co., as if he were the owner of said Clear Lake place, or any way interested in the same.

To the sixteenth interrogatory he saith: They do not make any such exhibit as to his receiving any part of the crops or rent of said place. Said books show that sums were paid to said English for fees as an attorney, and services and stamps, &c.

To the seventeenth interrogatory he saith: I know from Waddy Thompson, and from the books and correspondence of Waddy Thompson & Co., that said English was the attorney and agent of said Thompson in Arkansas, during the time I was in the employ of the firm, as already before stated.

To the eighteenth interrogatory he saith: For answer to this interrogatory and to avoid repetition, I refer to the papers marked "Exhibit B 1," "B 2," "B 3," "B 4," and "B 5," and "Exhibit C" to the deposition of said Morris in this case. So far as I know they con-

229 tain all the drafts and explanatory letters drawn by said English, as such attorney or agent, on hand among the books & papers of Waddy Thompson & Co. So far as I know, all such drafts or requisitions for money were promptly paid.

To the nineteenth interrogatory he saith: My understanding is that the item of one hundred dollars ($100) charged in the account contained in said Exhibit A as having been paid to said English on the 26th of February, 1867, for fees, was for drawing deed, &c., from Fleming to Thompson for the said Clear Lake place.

To the twentieth interrogatory he saith: Nothing of the kind ever came under my observation.

To the twenty-first interrogatory he saith: I do not know.

To the twenty-first and a half interrogatory he saith: I do not know anything of the matter enquired about in this interrogatory.

To the twenty-second interrogatory he saith: I only know that for and during the year 1867 said Clear Lake plantation was leased by Waddy Thompson to Morris, Smith & Morris, lessees.

230 To the twenty-third interrogatory he saith: The rent for the

doing so, &c., there were several persons about in the place where we met, but they were all strangers to me. I do not know who they were, nor do I suppose they heard the conversation between said
224 Thompson and myself. I do not know that I could say anything more than I have said, in my examination-in-chief, as to the attendant circumstances, and how said conversations came to take place.

CHAS. GALLAGHER.

Sworn to and subscribed before me this twentieth day of February, A. D. 1871.

CHAS. S. RICE,
U. S. Comm'r, District of La.

Deposition of Richard F. Harrison.

To the first interrogatory he saith: My name is Richard F. Harrison. I am fifty-eight years of age. I reside in Harrison County, in the State of Mississippi. I am at present a member of the legislature of that State, now in session at Jackson. My general profession and occupation is that of an accountant.

To the second interrogatory he saith: I am acquainted with all of them.

To the third interrogatory he saith: I was book-keeper of Waddy Thompson & Co., at New Orleans, at a salary of three thousand dollars a year, from some time in March, 1866, until the first day of July, A. D. 1867.

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To the fifth interrogatory he saith: I have no personal knowledge of the terms and conditions of such purchase beyond what may appear on the books here. I know, in general terms, that there were other deferred payments to be made by Thompson for said place.

To the sixth interrogatory he saith: Some time in the month of March, 1867, near the middle of said month, as well as I recollect.

To the seventh interrogatory he saith: Nothing of my own personal knowledge further than this: that about the time of the transaction enquired about, Mr. Gallagher called on me for information regarding the Clear Lake purchase. Thompson told me he had made a good
226 trade, and that the rents of the place would pay in six years all he would have to pay in nine years. Mr. Gallagher asked me about that, and I referred him to Mr. Thompson for more definite information.

To the eighth interrogatory he saith: I took no part in any negotiation about the discounting of said notes.

To the ninth interrogatory he saith: On the 23rd day of March, A. D. 1867, John T. Fleming paid into the house of Waddy Thompson & Co., in New Orleans, sixty-five hundred dollars ($6,500) on his Red River planting account, kept with Thompson, Morris & Co., at Shreveport, Louisiana, and which appears on the books of the New Orleans house, to the credit of Thompson, Morris & Co., for said account. From all that occurred at the time, it was my understanding that said sum of sixty-five hundred dollars ($6,500) was paid of the money received by Fleming from Mr.

Gallagher; but I did not see him receive the money from Gallagher, and cannot state positively that it was part of the same money received on the discount of said notes.

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To the eleventh interrogatory he saith: I have. They are here before me, in the office of Wm. B. Morris & Co., New Orleans.

To the twelfth interrogatory he saith: I have examined the paper marked "Exhibit A" to the deposition of William B. Morris, in this case, and compared it with the books of said firm of Waddy Thompson & Co., at New Orleans, and find the same to be correct as to the amount of the indebtedness of Waddy Thompson & Co., and of Thompson & Cummins, at Memphis, Tennessee, to R. H. Ober & Co., and how the same was paid off, and as to the dates of the several entries as therein stated.

To the thirteenth interrogatory he saith: Said closing entries here enquired about are embraced in said Exhibit A, here again referred to and made part of this deposition.

To the fourteenth interrogatory he saith: He was. Said firm did business in New York. The style of their firm in New Orleans was Ober, Otwater & Co.

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To the sixteenth interrogatory he saith: They do not make any such exhibit as to his receiving any part of the crops or rent of said place. Said books show that sums were paid to said English for fees as an attorney, and services and stamps, &c.

To the seventeenth interrogatory he saith: I know from Waddy Thompson, and from the books and correspondence of Waddy Thompson & Co., that said English was the attorney and agent of said Thompson in Arkansas, during the time I was in the employ of the firm, as already before stated.

To the eighteenth interrogatory he saith: For answer to this interrogatory and to avoid repetition, I refer to the papers marked "Exhibit B 1," "B 2," "B 3," "B 4," and "B 5," and "Exhibit C" to the deposition of said Morris in this case. So far as I know they con-

229 tain all the drafts and explanatory letters drawn by said English, as such attorney or agent, on hand among the books & papers of Waddy Thompson & Co. So far as I know, all such drafts or requisitions for money were promptly paid.

To the nineteenth interrogatory he saith: My understanding is that the item of one hundred dollars ($100) charged in the account contained in said Exhibit A as having been paid to said English on the 26th of February, 1867, for fees, was for drawing deed, &c., from Fleming to Thompson for the said Clear Lake place.

To the twentieth interrogatory he saith: Nothing of the kind ever came under my observation.

To the twenty-first interrogatory he saith: I do not know.

To the twenty-first and a half interrogatory he saith: I do not know anything of the matter enquired about in this interrogatory.

To the twenty-second interrogatory he saith: I only know that for and during the year 1867 said Clear Lake plantation was leased by Waddy Thompson to Morris, Smith & Morris, lessees.

230 To the twenty-third interrogatory he saith: The rent for the

year 1867 was not paid by Morris, Smith & Morris, who failed. I know nothing about 1868.

To the twenty-fourth interrogatory he saith: I do not know that said English ever received any of the rents or profits of said place. None were paid to him in or for the year 1867.

To the twenty-fifth interrogatory he saith: I only know about this as shown by said Exhibit A, here again referred to, as compared by me with the books of Waddy Thompson & Co., and found to be correct, and not from any personal knowledge of my own as to the amount, time, or attendant circumstances of any such payments by said Ober to said Thompson for said Clear Lake place.

To the twenty-sixth interrogatory he saith: I do not know.

To the twenty-eighth interrogatory he saith: Referring to the year 1868, I do not know.

To the twenty-ninth interrogatory he saith: I do not know.

To the thirtieth interrogatory he saith: I do not know.

To the thirty-first interrogatory he saith: The matters here
231 enquired about never came under my observation.

To the thirty-second and thirty-third interrogatories he saith: I find it necessary to answer these interrogatories together. As before stated, I have examined the account of R. H. Ober & Co., and the Clear Lake place account on the books of Waddy Thompson & Co., as set forth in said Exhibit A, again referred to, setting out the entries relating thereto, and the closing entries of said accounts on said books, showing how the same were balanced or settled. The period of time enquired about, say on or about the first of January, 1868, was at a time when I was not in the employ of Waddy Thompson & Co. as book-keeper, and I do not, as the occasion of giving this deposition, go over all the books of Waddy Thompson & Co., so as to enable me to state from such examination the amounts of their assets and liabilities in the winter of 1867 and 1868, because it would require more time and research than is in my power to give to such an investigation. For further answer to these interrogatories, I state that on the
31st of May, 1867, just one month before I left the employ-
232 ment of Waddy Thompson & Co., I drew up from their books a balance-sheet of their affairs. I find said paper annexed to the deposition of William B. Morris, taken in this cause, marked "Exhibit H." Said paper here referred to, and made part of this deposition, is in my handwriting, and is a correct exhibit of the financial condition of said firm at that date; and shortly after the dissolution of the firm of Waddy Thompson & Co., I was specially employed by them, in my capacity of book-keeper and accountant, to examine their books and accounts, and to make out a balance-sheet, showing their assets and liabilities on and as of the 30th of June, 1868. In the performance of this duty, I then made a thorough examination of their books and accounts. I find said statement or trial balance-sheet, as then made out by me, annexed to said deposition of William B. Morris, marked "Exhibit I" thereto, and the same, here referred to and made part of this deposition,
was made out by me, and is in my handwriting, and contains a
233 correct exhibit of the accounts, assets, liabilities, and general financial condition of said firm on the 30th of June, 1868, as shown by their books. From information therein contained, and so derived, it appears, and I know, that said firm was embarrassed in June, 1868, and, as an inference from such examination, my impression is that the causes which led to their embarrassment date back prior to the winter of 1867 & 1868. I further state that said balance-sheet, made by me, and

marked "Exhibit I," is a trial balance or approximation, and fails by slight discrepancy to balance, for which I am not responsible, not having kept the books after July 1st, 1867. The discrepancy is, however, not very material in amount. I further state that when I left the employ of Waddy Thompson & Co., on July 1st, 1867, it was because their financial condition was such as to compel them to economise or retrench their expenses.

To the thirty-fourth interrogatory he saith: I am not aware that I know of anything more than I have already stated.

To the thirty-fifth interrogatory he saith: I am not of kin to either of the parties to this suit, and in no way or manner interested in the
234 result thereof.

Cross-examination:

To the first cross-interrogatory he saith: I have done so.

To the second cross-interrogatory he saith: With Mr. Thompson, in December, 1865, in New Orleans; with Mr. Ober, in the fall or winter of 1866, in New Orleans. I have known Mr. Gallagher in New Orleans for, say, fifteen years past.

To the third cross-interrogatory he saith: I have none.

To the fourth cross-interrogatory he saith: I do not know, and was not present.

To the fifth cross-interrogatory he saith: I do not know otherwise than as I have answered in my direct examination.

To the sixth cross-interrogatory he saith: Only once that I know of.

To the seventh cross-interrrogatory he saith: Only as I stated in my answer to said seventh interrogatory.

To the eighth cross interrogatory he saith: I had no hand in it.

To the ninth cross-interrogatory he saith: I may have given or written such receipt, but do not recollect. I had no occasion to take
235 any such receipt, and do not know where it is.

To the tenth cross-interrogatory he saith: In New Orleans.

To the eleventh cross-interrogatory he saith: By comparing said Exhibit A with the books of Waddy Thompson & Co., and finding said Exhibit A to be correct.

To the twelfth cross-interrogatory he saith: I only know that I find the books of Waddy Thompson & Co. here in the office of Wm. B. Morris & Co. I do not know, of my own knowledge, where they have been since 1868.

To the thirteenth cross-interrogatory he saith: I have no control over said books, and cannot furnish them on such request.

To the fourteenth cross-interrogatory he saith: That I have already done, (referring to said Exhibit A.)

To the fifteenth cross-interrogatory he saith: I have no knowledge except as to R. H. Ober.

To the sixteenth cross-interrogatory he saith: I have not so stated.

To the seventeenth cross-interrogatory he saith: There is no such entry.

To the eighteenth cross-interrogatory he saith: I do not know,
236 except in the way as stated in reference to Judge English, and during the time stated in my answer to the seventeenth interrogatory-in-chief.

To the nineteenth cross-interrogatory he saith: As far as is in my power I have already furnished all the information, or by reference adopted the same, concerning the matter enquired about.

To the twentieth cross-interrogatory he saith: I am not aware of any

regular account or bill of fees being rendered by Judge English; all I know about that is what appears in said Exhibit B 1, B 2, B 3, B 4, and B 5, and Exhibit C.

To the twenty-first cross-interrogatory he saith: I do not know anything about it.

To the twenty-second cross-interrogatory he saith: I never saw E. H. English that I know of, and never had any correspondence with him on that subject.

To the twenty-third cross-interrogatory he saith: I have no such letters.

To the twenty-fourth cross-interrogatory he saith: I have no such draft.

To the twenty-fifth cross-interrogatory he saith: I only know that it was rented by Thompson to Morris, Smith & Morris for the year
237 1867, and in the way as stated in my examination-in-chief.

To the twenty-sixth cross-interrogatory he saith: I only know, as stated, as to the year 1867.

To the twenty-seventh cross-interrogatory he saith: I do not know that he ever received any such rents.

To the twenty-eighth cross-interrogatory he saith: I only know as shown by the books of Waddy Thompson & Co. and the account taken therefrom included in said Exhibit A.

To the twenty-ninth cross-interrogatory he saith: I do not know that he was so consulted.

To the thirtieth cross-interrogatory he saith: I do not know who cultivated said place in 1868, except what and as appears in said trial balance, marked "Exhibit I," reference being thereto had.

To the thirty-first cross-interrogatory he saith: I have no knowledge. Said trial balance, marked "I," only comes down to June 30th, 1868, and cannot include the crop of that year.

To the thirty-second cross-interrogatory he saith: So far as I know they never went to his credit.

To the thirty-third cross-interrogatory he saith: I know of no additional consideration.

238 To the thirty-fourth cross-interrogatory he saith: I have no knowledge of this matter.

To the thirty-fifth cross-interrogatory he saith: I am not aware that I can answer this interrogatory more specifically than I have done in my examination-in-chief.

To the thirty-sixth cross-interrogatory he saith: Again I say that I am unable to answer this interrogatory more specifically than I have done in my examination-in-chief.

To the thirty-seventh cross-interrogatory he saith: I am not aware of any other matter of interest to the parties to this suit.

To the thirty-eighth cross-interrogatory he saith: I have no such interest; none whatever.

To the thirty-ninth cross-interrogatory he saith: I have done so, or have endeavored to do so.

RICH'D F. HARRISON.

Subscribed and sworn to before me this twentieth day of February, A. D. 1871.

CHA'S S. PRICE,
U. S. Comm'r, Dist. of La.

Exhibit A to deposition of Morris.

This is Exhibit A, referred to in the deposition of William B. Morris.

CHA'S S. RICE,
U. S. Comm'r.

A.

239 *R. H. Ober & Co. in acc't Waddy Thompson & Co., N. O.*

1867.				
Aug 19.	Balance due R. H. Ober & Co., N. Y., on cotton ship'd			1,861 88
Feb'y 29, '68.	D'ft at 4 months, July 26, '67, given up	10,000		
	3 " Aug. 16, '67, " "	5,000		
	3 " Oct. 20, '67, " "	5,000		
			20,000	
Feb. 29, '68.	Am't Thompson & Cummins' acc't	5,783 02		25,783 02
				27,644 90

DEBIT.

Nov. 14, '67.	Cash remitted from St. Louis		1,900 00
Feb. 29, '68.	Balance due R. H. Ober & Co		25,744 00
Feb. 29, '68.	To Clear Lake plantation, to balance acc't, $25,744.90		

CLEAR LAKE PLANTATION.—WADDY THOMPSON.

Jan. 18, '67.	John T. Fleming, 1 month sight draft, due March 4, '67, and paid by Waddy Thompson & Co., N. O., to City National Bank		6,000 00
Jan. 18, '67.	John T. Fleming, 60 da. d'ft, due M'ch 22, '67, for stock & implements paid by W. T. & Co., N. O., to City National Bank		2,221 00
Feb. 26.	Stamps on lease 122.75; to E. H. English, 100; fees & recording, 50		272 75
M'ch 4th, '67.	Paid E. H. English, deft., for stamps		10 00
M'ch 31st, '68.	D'ft to E. H. English for fees as trustee		390 00
" 5th, '68.	Paid Bradshaw fees for replevin of stock		25 00
July 3.	To Morris, Smith and Morris, lessees Clear Lake place, being amt. of actual loss suffered on the lease, suffered by Waddy Thompson	17,145 39	
	Less amount charged for stock & implements Feb. 26, 71, being portion of the 2,221.00 Fleming d'ft, as above stated	2,056 70	15,088 69
	Actual am't charged to Clear Lake on books W. T. & Co., N. O		24,007 44

240 CREDIT.

Feb. 29, '68.	Sale of Clear Lake place to R. H. Ober, by Waddy Thompson, in Arkansas	25,744 90
	Showing a nominal profit on the acc't of 1,736.46, favor of Waddy Thompson.	

Exhibit B 1 to deposition of Morris.

This is Exhibit B 1, B 2, B 3, B 4, & B 5, referred to in the deposition of Wm. B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

B 1.

[Rev. stamp, 2 cents.]

LITTLE ROCK, ARKS., *February 26th*, 1867.

Pay to the order of Merchants' National Bank of Little Rock, Arks., at sight, seventy dollars, and charge to account of your Mr. Waddy Thompson, (drawn for funds to stamp and record deed from Fleming to him,) and oblige,

Yours, &c.,

E. H. ENGLISH.

To Messrs. WADDY THOMPSON & CO.,
New Orleans, La.

(Endorsed:) Pay Jules Cassard, esq., cashier, or order, for collection and credit.

CHAS. A. CLARK,
241 *Cashier City National Bank.*
Per J. DUDENLUFER.

(Endorsed:) Paid W. Morris.

Exhibit B 2 to deposition of Morris.

B 2.

$1,275.65.] LITTLE ROCK, *Febr'y 27th*, 1867.

Thirty days after date pay to the order of Chas. A. Clark, cash'r, twelve hundred and seventy-five $\frac{65}{100}$ dollars, value received, which place to the account of advances on Wm. Reynold's cotton.

WADDY THOMPSON,
By E. H. ENGLISH, *Agent.*

To WADDY THOMPSON & CO.,
New Orleans, La.

No. 1022. Due Mch 29, Apl.

(Endorsed:) Pay to Jules Cassard, esq., cashier, or order, for collection and credit.

CHAS. A. CLARK, *Cashier.*

(Endorsed:) Paid April 1, '67.

Exhibit B 3 to deposition of Morris.

B 3.

[5-cent rev. stamp.]

LITTLE ROCK, 31*st March*, 1868.

At sight pay to the order of E. H. English three hundred and ninety dollars, and charge to account of his services as atty. & trustee.
$390.

WADDY THOMPSON.

To WADDY THOMPSON & CO.,
New Orleans, La.

242 (Endorsed:)

E. H. ENGLISH.

Pay to Jules Cassard, esq., cashier, or order, for collection and credit.
CHAS. A. CLARK, *Cash'r.*

Received payment.

CITY NAT. BANK,
Per J. DUDENLUFER.

Exhibit B 4 to deposition of Morris.

B 4.

LITTLE ROCK, ARK., *March 8th*, 1867.

Messrs. WADDY THOMPSON & CO.

GENTS.: As I have heretofore advised your Mr. Thompson, I obtained of the Merchants' National Bank of this place, a short time since, $1,250, and sent by the capt. of the Florence Traber, to advance to Mr. Reynolds, of Pope County, $1,000 on 20 bales of cotton, when delivered on the boat, to be shipped to your house, and $250 to pay U. S. taxes on same; and I drew a bill on your house in the name of your Mr. Waddy Thompson for the amount, with an additional sum charged by the bank

for advancing the money. When the boat reached the shipping-point of Mr. Reynolds, he had but ten bales of cotton. He said bad
243 weather had prevented his customers from bringing in the other ten. The captain offered him half the money on the ten bales, but he wanted the entire sum sent by me on the ten bales, promising to get the other ten and forward them. But under my instructions to the capt., he would not do this. So he got no cotton, and brought back to me the $1,250, which I deposited to the credit of Mr. Thompson in bank this day, and took a receipt for it, of which the bank promised to advise him.

I have no doubt but Mr. R. acted in good faith, but was disappointed in getting in the cotton, as represented, by bad weather, there having been a heavy fall of snow, which is now on the ground.

Respectfully, &c.,

E. H. ENGLISH.

Exhibit B 5 to deposition of Morris.

B 5.

LITTLE ROCK, ARK., *March 8th*, 1867.

WADDY THOMPSON, Esq.

DEAR SIR: General Fleming's deed, duly executed by his wife, came safely back, but no more lands inserted. I stamped it, and have had it recorded here, and will send it to Prairie to be recorded first safe chance. Drew on you for $70—$60 for stamps, and $10 to pay expenses of recording in the two counties.

244 Drew from the bank a week ago, and sent by capt. of Florence Traber, $1,000, to advance to Reynolds on 20 bales of cotton, and $250 to pay taxes on same; money to be paid to Reynolds when cotton put aboard of the boat, shipped to your house, my care here, and money returned to me if cotton not delivered on boat. Reynolds was here, and said cotton was on hand ready to be put aboard the boat. This is the only money I have drawn to advance on cotton for you.

Bocock and my brother make to me unpromising reports as to the operations of your Clear Lake tenants.

Newton J. Smith died recently.

Parson Morris (he of the horror of long instruments) went to Memphis and brought over some Dutch and negroes who had some disease among them like cholera, which spread on the plantation, and seven of the hands died and others were down with the disease. They are short of hands. My brother says they got goods somewhere and sold them recklessly to the negroes on time; that many of the negroes, the chances are, will not work out the debt.

Morris also got supplies at Memphis, landed them at Wild Cat, left them exposed, the rain fell on the barrels, &c., the heads burst
245 out, and the hogs devoured much of the supplies.

Bocock and my brother both think they will make a failure.

If you had nothing more important to do, it might be worth your while to come up to the place, and, before it is too late to plant cotton, make arrangements to put it into better hands, if you find they will fail. The only danger of loss to you will be in the large advances to them.

Hawkins says Morris shipped to Memphis some cotton on which you had made advances.

I am sorry to make such a gloomy report, but think it best to advise you of all I have heard. We have a heavy snow on the ground; unu-

sual for March, and unpromising for planting. The planters will be late with the crops.

Respectfully,

E. H. ENGLISH.

Exhibit C to deposition of Morris.

This is Exhibit C, referred to in deposition of Wm. B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

C.

HICKS' STATION, ARKANSAS,
April 13th, 1867.

Hon. E. H. ENGLISH.

246 DEAR SIR: Please find enclosed receipt for Fleming's land. The taxes which he told you was paid was for the year 1865. The tax has not been paid for 1866. You will therefore oblige Mr. Gray by paying the money over to the State treasurer and forward me the receipt for the same.

Yours, very truly,

W. F. HICKS.

STATE OF ARKANSAS,
SHERIFF'S OFFICE, PRAIRIE COUNTY,
April 13th, 1867.

Received of John T. Fleming one hundred and twelve dollars and 86. cents, in full for the State, county, and taxes due on the following-described lands, for the years hereinafter mentioned, viz:

Part of section.	No. of section.	Town.	Range.	No. of acres.	State tax.	County tax.	Years taxable.
S. ½ S. E.	29	2 S.	9 W.	80	.....	.....	1866
N. ½ N. E.	32	"	"	80	.....	.....	"
S. E.	28	"	"	160	.....	.....	"
E. ½ N. E	28	"	"	80	.....	.....	"
W. ½ N. W	27	"	"	80	.....	.....	"
S. E. S. W	27	"	"	40	.....	.....	"
S. W. S. W	22	"	"	40	.....	.....	"
W. ½ S. W	27	"	"	80	.....	.....	"
S. E. S. W	27	"	"	40	.....	.....	"
N. E. S. W	27	"	"	40	.....	.....	"
247 S. W	21	"	"	160	.....	.....	"
S. ½ S. E	20	"	"	80	.....	.....	"
S. ½	17	"	"	320	.....	.....	"
E. ½	18	"	"	320	.....	.....	"
S. E. and W. ½ N. E., and pt. N. W. and S. W	19	"	"	306. 38	.....	.....	"
E. ½ N. E	19	"	"	80	.....	.....	"
N. W. fr'l and N. ½ S. W. fr	19	"	"	.....	.....	.....	"
N. ½ N. ½	and 20	"	"	.....	.....	.....	"
E. ½ E. ½	and 17	"	"	411. 23	.....	.....	"
S. ½ N. W	20	"	"	80	.....	.....	"
N. E	22	"	"	160	.....	.....	"
S. W. N. E	17	"	"	40	.....	.....	"
S. ½ N. W	17	"	"	80	.....	.....	"
N. W. N. W	17	"	"	40	.....	.....	"
N. ½ and N. ½ S. ½	15	"	8 W.	480	75 24	37 62	"

J. R. GRAY,
Sheriff and Collector Prairie Co.

(Endorsed:) The within taxes on the lands of Fleming, sold by him to Waddy Thompson, should have been paid by Fleming, as they were assessed and due upon the lands before sale, but, Fleming
248 failing to pay them, they have this day been paid by Mr. Wilkinson for Waddy Thompson, and he should charge the amount to Fleming.

April 17th, 1867.

E. H. ENGLISH.

Exhibit D to deposition of Morris.

This is Exhibit D referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

D.

MEMPHIS, TENN., 12*th Dec'r*, 1867.

Messrs. WAD'Y THOMPSON & CO.,
New Orleans, La.:

GENTLEMEN: We telegraphed you this a. m., "Drew sight yesterday five hundred; advice by mail to-day. Waddy Thompson." A d'ft for $1,000 given by Mr. T. while in Ark. to secure consignment of cotton came in yesterday, and he made d'ft on you in our favor for half the amount.

Cotton market to-day active, but lower; 13 to 13¼ c. for middling.

Very respectfully,

THOMPSON & CUMMINS,
Pr. J. S. WELLS.

249 Mr. W. T. left for St. Louis last evening.

Exhibit E to deposition of Morris.

This is Exhibit E referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

E. (Copy.)

It is hereby understood and agreed between the parties to this contract, associated for the purpose of cultivating the Clear Lake plantation, in Prairie and Pulaski Counties, State of Arkansas, from date to the gathering of the cotton-crop in the fall of 1868, said parties being Waddy Thompson, Mr. W. Bowcock, and Vaiden, as follows:

1st. Waddy Thompson is to receive two thousand dollars ($2,000) rent for the land, to be paid as hereinafter provided, and is to furnish all the stock, implements, and tools on the place at a valuation to be agreed upon, said valuation to be considered as the amount of capital furnished, and to be re-imbursed as hereinafter provided. Waddy Thompson is farther to furnish cash or supplies for the working of the plantation during the season to the amount of two thousand dollars, ($2,000,) to be re-imbursed as hereinafter provided.

Wm. H. Bowcock is to furnish all the stock, implements, and
250 tools in his possession to assist in the working of the place, said

stock and implements to be valued by agreement, and the amount of valuation to be considered as capital and re-imbursed as hereinafter provided. Wm. H. Bowcock is to give his full time and services to working the place, and to receive therefore from the profits of the adventure, should there be any, a remuneration of one thousand dollars, ($1,000,) without any charge for board or lodgings, to be paid as hereinafter provided for.

3rd. Vaiden is to give all his time and services to the working of the plantation and to receive no remuneration for same, except the share of the profits, should there be any, as hereinafter provided. But no charge is to be made said Vaiden in any case for boarding or lodging while so employed.

4th. When the crop shall have been gathered and shipped, without unnecessary delay all live stock, tools, implements, and produce of the plantation belonging to the adventure shall be disposed of at public sale or otherwise, as may be agreed upon between the parties.

5th. From the proceeds of said stock, implements, and produce, and the proceeds of the cotton raised, the debts of the adventure shall be paid in the following order:

First. Two thousand dollars ($2,000) sent to Waddy Thompson.

251 Second. The two thousand dollars in cash ($2,000) on supplies (or thereabouts) furnished by Waddy Thompson.

Third. In full, if there should be sufficient, or in equal proportions, should there be deficiency, the capital furnished by Waddy Thompson and Wm. H. Bowcock in the shape of stock and implements, as provided in article 1 and 2.

Fourth. The compensation of one thousand dollars [one line illegible] cost for his services as contingently provided in foregoing article 2.

6th. After the above and any other debts or obligations incurred by the adventure have been paid in full, the profits remaining are to be distributed in the following manner:

Waddy Thompson two-fifths, ($\frac{2}{5}$ths.)
Wm. H. Bowcock two-fifths, ($\frac{2}{5}$ths.)
Vaiden, one-fifth, ($\frac{1}{5}$th.)

7th. The business of the adventure shall be conducted in the name of Wm. H. Bowcock & Co.

8th. All cotton raised shall be shipped to Waddy Thompson's firm in New Orleans, and they are to receive the usual commissions for advancing, purchasing, and selling.

252 9th. Should there be any loss incurred upon the adventure, it shall be equally borne by Waddy Thompson and Wm. H. Bowcock, and Vaiden shall not be responsible for any part of such loss.

LITTLE ROCK, ARKANSAS.

Exhibit F to deposition of Morris.

This is Exhibit F referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

F.

Agreement between Waddy Thompson and W. H. Bowcock as regards cultivation of the Clear Lake place, Prairie Co., Ark's.

The said parties are to be equal partners; the property put in by each having been entered upon the books of the concern at a valuation agreed to by Charles Wilkerson, agent for Thompson.

In consideration of Bowcock's services, he is to pay no rent. Each party is to be credited with 10 per cent. per annum upon the amount of his advances on settlement. Waddy Thompson binds himself to furnish from his house in New Orleans as much as $2,000 in supplies in due time to cultivate the crop. Waddy Thompson warrants the title
253 to all the stock and property he is credited with. This agreement is for the year and crop of 1868.

W. H. BOWCOCK.

Exhibit G to deposition of Morris.

This is Exhibit G, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

G.

LITTLE ROCK, ARK., *29th Jan.*, 1868.

W. B. M.:

I enclose you notice to se've on Mr. Galigher. Insert his name and give him the notice, and then make oath that a copy was served by you, and attach the oath made by you to this notice and send it back to Judge English. This should be done before a com. for Ark. Charlie is just in from below, and says he got off on Enterprise—

15 bales from Greenwood.
18 " " McNeely place, ½ of which is ours.
10 " " James McNeely.
11 " " Wells.
3 " " Little.

57

The 3 from Little was put by him (Little) on joint a/c for him and
254 us; don't know yet what it cost. This boat will probably get at Wild Cat—

Barnes	10 bales.
From the lake	10 "
Bowcock	12 "
Hasley	2 "
	24
	57
In all	81

Your dispatch recd. this morning. Important that you see Krutchma & Russell at Arkadelphia. Low middling, 17. I will go to Arkadelphia to-morrow morning. I have no mem. of Kretchma's a/c, but believe it was about $500.00.

Hastily, &c.,

THOMPSON.

Exhibit H to deposition of Morris.

This is Exhibit H, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

H.

MAY 31, 1867.

255	2	Interest		3,914 76	
	8	Expenses		5,359 99	
	12	Freight			670 50
	21	Charges			100 00
	38	Cotton account		4,733 05	
	60	Merchandise, (Gantt, Lewis & S.)			81 35
	90	W. B. Morris & Co			911 36
	94	Loan account, Lott, Wood & Co			600 00
	98	W. B. Morris		409 60	
	107	Thompson, Morris & Co			55,773 43
	108	Do., new a/c			3,392 58
	111	Merch'ts' Nat'l Bank, L. Rock			1,621 80
	112	Profit & loss			11,629 51
	121	Waddy Thompson		18,597 71	
	126	Clear Lake plantation		6 447 05	
	129	J. N. Bradford & Co		1,594 43	
	130	C. A. Janvier		1,008 55	
	133	Pittman Bros. & Co			397 31
	134	J. T. Fleming		393 25	
	138	W. H. Bowcock		82 57	
	140	S. M. Wheaton		10,430 38	
	141	Wheaton & Thompson, planting a/c			2,700 80
		Brice, Miller & Jones		123 42	
	142	Sam. De Bow		3,117 95	
	145	F. Otto			161 60
	146	J. G. Glover		360 28	
	151	W. J. Castell			3 80
	155	P. S. Sanchez		100 00	
	157	Thompson & Co		336 64	
		E. Thompson			343 71
	159	R. F. Harrison		4,312 48	
	160	Bills payable:			
		Thompson, M. & Co	1,000		
	161	Pike, L. & B	8,000		
	162	S. M. Wheaton & Co	9,560 25		
		W. H. Letchford & Co	1,016 40		
		J. R. Matthews	4,966 84		
			24,543 49		
		Forward		61,322 11	78,387 75
256		Brought forward		61,322 11	78,387 75
	162	Bills payable—continued:			
		Continued	24,543 49		
		J. F. Fleming	4,900 00		
		Mrs. E. S. Kenna	1,280 00		
		B. bills receivable:			
	164	H. B. Clifford	311 70		
		Carlett & B	6,356 46		
		Do	6,356 46		
		J. T. Fleming	4,069 20		
		Do	4,069 20		
		Phil. Brumm	1,531 00		
		J. T. Scott	351 00	23,051 02	
	172	Harris & Russell		1,367 68	
	180	C. F. Gribble		124 90	
	181	Coughton & Fleming		2,804 14	
	182	L. Russell		3,596 96	
	185	Aetna Insurance Company			2,096 27
	188	J. Fies & Co		908 90	
	240	J. Ainslie, cash'r		1,500 00	
	241	J. Ainslie		510 06	
	242	Wheelock, Finley & Ball			16 00
	248	Ober, Nauson & Co., N. York a/c			8,723 50

249	Signor & Smith	459 76	
250	Jacob Hawkins	1,411 07	
251	G. W. Morris		42 66
252	George Moren		174 56
253	T. J. Barnes	884 47	
254	R. Co., J. N. Wall	149 54	
255	Morris, Smith & M	15,881 09	
256	R. Gwynn		308 06
	Jas. McNeely		40 89
257	N. D. English	197 91	
	C. D. Morsley	276 36	
258	Simmons & Burton		173 02
	Jos. Nichol	23 23	
259	Jas. Buie	241 33	
260	Ezmond White	523 38	
	Wm. Reynolds		307 56
		115,233 91	120,993 76
257	Brought forward	115,233 91	120,993 76
312	R. N. Williams	77 09	
314	N. H. Badgett	16 50	
315	G. L. White	1,568 14	
	M. L. Davis		1,041 23
316	Pemberton & Scott		209 76
317	N. J. Smith	93 29	
	Drew White	100 03	
318	L. F. Kretschmar & Co	467 44	
319	G. B. De Russey		205 25
320	Sam. Houston	280 50	
326	Ship't 200 b. c., Georgina	28,705 29	
327	W. B. Sillivan	88 37	
328	Mrs. Etty Clark	250 00	
	Calvin Pemberton	143 56	
329	Mrs. Z. Janvier		470 00
	J. B. Clark, jr	500 00	
330	Ober, Nauson & Co., L'pool, a/c, adv. on 200 b. c.		21,858 41
	" " 154 "		15,826 10
	John Simms		21 60
	Stephens & Seymour	61 33	
331	O. B. Graham & Co., adv. on 150 b. c		14,158 26
	Shipm't 150 b's, Nonantine	15,552 17	
	" 154 " P. Dickson	18,050 84	
332	W. W. Morris	79 10	
	H. G. Galloway		160 48
	Fletcher & Notze		856 82
333	E. H. English		190 41
	J. G. Chancellor		999 42
	Mrs. E. A. Kennard		207 08
	Balance of cash-book		4,068 98
		181,267 56	181,267 56

258 *Exhibit I to deposition of Morris.*

This is Exhibit I, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

I.

Trial balance, June 30th, 1868.

DR.

9	Expenses	350 69	350 69
21	Charges	4,846 80	4,846 80
	Profit and loss		16,433 42
	Actual accounts		21,630 91

80	Waddy Thompson, new a/c			11,754 08
97	W. B. Morris			1,866 18
121	Waddy Thompson, No. 1			19,285 24
122	Do. No. 2			11,055 04
126	Clear Lake plantation			6,837 05
127	Merchants' National Bank, special a/c			203 58
139	W. H. Bowcock & Co., (say $1,700.00)			1,900 00
140	S. M. Wheaton			14,247 82
142	Sam'l De Bow & Co			1,817 95
146	John G. Glover			360 28
155	P. S. Sanchez			100 00
157	Thompson & Co			336 64
	Forward			91,394 77
259	Brought forward			91,394 77
	Bills receivable			
164	H. B. Clifford	311 70		
	J. T. Scott	107 00		
	Fagan & Galloway	954 32		
	G. L. White	1,616 56		
	J. Fies & Co	974 00		
	R. F. Harrison	2,551 90		
	J. N. Bradford & Co	1,514 50		
	L. T. Kretschmar & Co	489 45		
	J. F. Fleming	4,802 50		
	Do	2,401 25		
	Do	2,401 25		
				18,124 43
168	Chas. Wilkerson			311 55
172	Harris & Russell			21 94
181	Caughlin & Fleming			2,194 35
183	Lorenzo Russell			840 06
189	Morris, Smith & Morris			17,145 39
192	A. L. Cummins & Thompson			2,030 23
193	Rent account			771 05
194	E. C. Wells			300 00
241	Mrs. E. J. Dortsch			300 00
248	R. H. Ober & Co			38 12
250	Jacob Hawkins			1,064 76
256	James McNeely			391 21
257	N. D. English			178 87
"	A. D. Horsley			276 36
258	Duncan Buie			125 00
259	Joseph Buie			558 00
				136,066 09
260	Brought forward			136,066 09
260	Ezmond White			523 38
261	C. Wilkerson, special			474 59
263	A. J. Stuart			1,240 63
264	W. E. A. Tisdale			100 00
314	N. H. Badgett			923 56
"	W. J. Rodgers			242 24
317	N. J. Smith			93 29
"	Drew White			100 03
327	W. B. Sillivan			88 37
329	J. B. Clark, jr			500 00
334	Minnesota & N. Y. gold stock			902 50
"	Garland, White & Nash			1,000 00
335	John Breedlove			240 00
"	B. S Greenwood			209 72
337	A. S. Cabell			56 72
				172,761 12
254	R. C. & J. M. Hall			149 54

Trial balance, June 30th, 1868.

CR.

261	2	Interest		1,733 48
	12	Freight		5,749 92
	29	Suspense a/c, ch'k on N. Y., $500.00		501 25
	32	Cotton sales		4,881 68
	38	Cotton account		1,019 98
	42	Insurance		3,506 07
	46	Fire insurance		11 13
	177	Commission		5,695 42
				23,098 93
		Actual accounts:		
	107	Thompson, Morris & Co., old a/c		
	109	do. new "		
	111	M'rch'ts' Nat'l Bank, L. Rock		
	128	Do. joint a/c		
	138	W. H. Bowcock		
	160	Bills payable:		
		Thompson & Co	1,000 00	
	162	R. P. Ober & Co	10,000 00	
		Do.	5,000 00	
		E. H. Avery	3,000 00	
		Do.	3,780 00	
		R. P. Ober & Co	5,000 00	
		J. R. Matthews	1,000 00	
		Jones, cash'r	4,500 00	
				33,280
		Forward		138,409 25
262		Brought forward		138,409 25
	185	J. B. Bennett, agent		1,537 00
	192	Thompson & Cummins		10 42
	254	R. A. Little		29 80
	264	W. H. Fort		381 79
	315	G. L. White		352 50
	328	Mrs. Etty Clark		232 00
	329	Mrs. Z. Janvier		470 00
	333	M. G. Galloway		217 89
	336	Clear Lake & McNeely		1,153 83
	337	Suspense account		
		A. S. Cabell	286 40	
		Moffat	59 55	
				345 95
				143,139 43

263 *Exhibit J to deposition of Morris.*

This is Exhibit J, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

J.

MEMPHIS, TENN., *July 28th*, '68.

Know all whom it may concern that the bearer, William B. Morris, is hereby authorized to attend to all claims and accts. due Waddy Thompson & Co. in the State of Ark., and to make all settlements therefor and render acct. thereof.

I hereby ratify and confirm all such settlements as he may make on the occasion of his trip to Ark.

(Signed) WADDY THOMPSON.

A true copy.

CHAS. S. RICE, *U. S. Comm'r.*

Exhibit K to deposition of Morris.

This is Exhibit K, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

K.

NEW ORLEANS, *8th May*, 1869.

WM. B. MORRIS, Esq.:

264 DEAR SIR: You are hereby fully authorized to make collections, arrange settlements, and transact any other business for my acct. in the same manner as though I were myself present and acting in my own person.

Resp't,
(Signed) WADDY THOMPSON.

I accept this authority.
(Signed) WM. B. MORRIS.

A true copy.

CHAS. S. RICE,
U. S. Comm'r.

Exhibit L to deposition of Morris.

This is Exhibit L, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

L.

Gen. John T. Fleming in acct. with Waddy Thompson & Co.

265	Jan. 1, '67. To balance at your debit on a/c rendered	688 40	
	" your draft paid	1,600 00	
	" 1 keg whiskey sent you	31 00	
	" cash recieved of J. H. Newbern	30 00	
	" your d'fts paid, $300, $251.56	551 56	
	March 1. " your share debit, Thompson & Fleming	2,737 15	
	" " personal a/c at debit	71 29	
	" " ¼ share S. B. May, Duke stock	1,214 00	
	" cash of F. F. & H., and ch'g'd to W. T., 10,000, 9,000	1,000 00	
	" ½ val. stock taken by you on a/c	1,000 00	
	" gold sent you by Bowcock to pay for mules	1,040 00	
	" cash of C. H. Hervey	1,130 00	
	" your store a/c at Lost Prairie, 420.00		
	" " draft paid, 500.00	920 00	
	" " ½ interest on 26,000 advanced by W. T	1,300 00	
	" " ½ loss on Lost Prairie planting adventure	4,400 00	
			17,713 40

CONTRA.

	Jan., '67. By amt. paid J. B. Keatts on gold a/c, ⅔ of 4,612.50	3,075 00	
	M'ch 23. " cash recd. of you on acct	6,500 00	
			9,575 00
	Balance due Waddy Thompson & Co		$8,138 40
	Oct. 31, '67. To interest & coms. on above to date		1,466 60
	Settled by notes		9,605 00
	Oct. 31, '61. At 1 d. date, order of Waddy Thompson with 6 % int	4,802 50	
	" At 1 d. date " " " " " "	2,401 25	
	" At 1 d. date " " " " " "	2,401 25	
		9,605 00	

266 The above notes are held by Nashville 3d National Bank as a collateral security on $3,750.00, acceptance of W. T. & Co., who also hold assignment of John T. Fleming's R. R. stock in Nashville & Decatur R. R. line, $12,500.00.

Exhibit M to deposition of Morris.

This is Exhibit M, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

M.

NEW YORK, *29th August*, 1867.

Mess. WADDY THOMPSON & Co.,
New Orleans, La.:

DEAR SIRS: Your favor 21st to hand and contents duly noted. We credit your acct., 19th Aug., $380, interest allowed on $929.29, Liverpool; excess from 29 July to date of acct. rendered you; making balance due us 19th inst. $1,858.01, and we ask you to remit at your earliest convenience.

We regret, as before mentioned, the unprofitable results of your shipments, but the course of the Liverpool market resulted in disappointment to all our customers. Our cotton-market very quiet, and prices almost nominal at 27 cts. for middling uplands, and not many buyers.

Yours, truly,

R. H. OBER & CO.

267 *Exhibit N to deposition of Morris.*

This is Exhibit N, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Commissioner.

N.

NEW YORK, *Nov. 2nd*, 1867.

WADDY THOMPSON, Esq.,
Memphis, Tenn:

DEAR SIR: Yours of the 29th is at hand, and I am pained to hear of your affliction, and deeply sympathize with you, and trust that you may be spared any farther . The yellow fever seems to have been very bad throughout the South, and reached a point North much higher than usual. We hope still that you will be able to get under way and be relieved in your business soon. The crop in Arkansas, we hear from all sources, is very fine, and turning out more than an average in lint. Money at this time, as you know, is worth more to us than at any other, and we hope your New Orleans partner will be able to remit us in time, in case you cannot get shipments here or well on the way. As to removing, it is the most damaging process that any house does. We would prefer being under cash advanced, short time. Your first maturity is 5,000, due 17th inst., besides the amount of cash out, i. e., about 2,000$. Your last dr'ft for 5 M appeared some time since, and been accepted, and we have been looking for check for about 1,900$ ever since. That money is probably laying to your credit in St. Louis yet.

268

Your second maturity is due 29th, for 10 M dollars, which was the first acceptance, but it being 4 mos. and the 2nd d'f't for 5,000, being at 90 a. d., makes it first to mature. We hope your partner in New Orleans will be able to remit, as our business is now curtailed in proportion as our means happen to get tied up.

The disastrous times among the cotton-merchants throughout the country has ruled them all down to their own capital, and, as a commission-merchant yourself, you understand the position. Those of us left have too much pride to be borrowers, and decline business rather than be, and, of course, want to be able to do all the business we can safely, and consequently it is a serious matter to be out of any active means. Our acceptances for you is nearly ¾ths of all we have out, and all the rest are for property in hand & on the way, with one small exception, and consequently we have all our means in cash advances on property, &c., in hand, & which is necessary in the present status of affairs. Our business is growing larger daily, and it is mortifying to have to
269 decline any good business. I am frank with you and talking on the square. Expect you to do your utmost in our behalf.

Yours, truly,

R. H. OBER.

Exhibit O to deposition of Morris.

This is Exhibit O, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

O.

NEW YORK, *Nov. 2nd*, 1867.

Messrs. WADDY THOMPSON & CO.,
New Orleans, La.:

GENTLEMEN: We have received a letter from your Mr. T. at Memphis, stating that he had written you to remit us $10,000, or as soon as possible, if possible, to provide for your maturities, which we hope you will be able to do. Your first maturity is for $5,000, due 17th; 2nd, due 29th, for 10 M dollars; besides, we are under cash advance already of 2,000$ to you on current account. He, at the same, writes that he fears he cannot get shipments here in time to provide. We hope you will not fail to be on hand in time, as money is very desirable to
270 us just now, owing to its general stringency throughout the West and South, as it is the only thing that will command business.

The season being now upon you, you can doubtless negotiate some with your banker for a short time, in case your shipments are not realized in time to remit. It takes your mails about 5 days to reach us.

Please telegraph us on receipt of this, or as soon after as you can, letting us know whether there will be any disappointment.

Yours, truly,

R. H. OBER & CO.

NOVEMBER 7TH, '67.

Messrs. R. H. OBER & CO.,
No. 43 Broad Street, New York:

DEAR SIR: Yours of 2nd inst. is at hand, and I regret my inability to make you a definite answer at this moment. I purpose leaving for Memphis to-night in order to meet Mr. Thompson there prior to his depart-

ure for Ark. I find myself unable to negotiate any time exchange upon any point, our money-market being excessively tight, and must depend upon sending you a reinforcement from Memphis to meet the paper maturing on the 17th inst. After my arrival at Memphis, and sur-
271 vey of the field there, I will at once report you as to our means for the 29th inst. Being to this day without a bale of cotton from either Red, Ouachita, or Arkansas Rivers, I naturally feel much solicitude about the early maturity of our paper. Within a day or two after receipt of this you should be placed in funds for am't of current acct., say $1,900, proceeds of bill on your house discounted by Commercial Bank St. Louis, as per arrangement of our Mr. Thompson. I can only add here that no pains shall be spared upon our part to protect you from any disappointment by reason of your kindness in meeting our wants.

Very truly, yours,

WM. B. MORRIS,
Of Waddy Thompson & Co.

Exhibit P to deposition of Morris.

This is Exhibit P, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

P.

LITTLE ROCK, ARK.,
September 5th, 1867.

WADDY THOMPSON, Esq.:

DEAR SIR: You will remember that at the time you purchased Gen'l Fleming's lands he assured you and me that there were no
272 judgments against him in Prairie County, where the principal body of the land is situated. The general was no doubt honest in so stating, but he was mistaken. I recently went to court in that county and found that under an execution issued upon a judgment obtained by Jordan N. Embree, of Jefferson, against Gen'l Fleming, before the date of his sale and conveyance to you, the sheriff had levied upon and advertised for sale all the lands sold by Fleming to you situated in Prairie County. He sold the lands, the whole that he had levied on under the execution, and I bid them off in your name for $844.70 in the aggregate, that being the amount of the judgment, interest, and costs. The sheriff took my personal obligation for the money and executed to you a deed for the lands, to be delivered to me when I pay him the money, which I promised to pay as soon as I could write to you and obtain it. You will, therefore, send me a check on the bank here for the amount, or, if not convenient to do this, authorize me to draw on you for the money. Your next note to Fleming is not due until January next, I think, but you will have to charge him with the sum so paid for him, with interest, commissions, &c., for advancing. I was compelled to purchase the lands or they would have been lost to you by sale to some one else. When the money is paid to the sheriff, I
273 will take such a receipt from him as will answer your purpose in settling with Fleming.

We are having a fine season for the maturing of cotton, and the crop generally is fair.

I would like you or Wilkerson to be here early in the picking season, to look after your Morris & Co. cotton. I am so remote from the planta-

tions cotton might be shipped without my knowledge, though I hardly think Morris will act the rascal in that way.

Truly, &c.,

E. H. ENGLISH.

Exhibit Q to deposition of Morris.

This is Exhibit Q, referred to in the deposition of William B. Morris.

CHAS. S. PRICE,
U. S. Comm'r.

Q.

WILD CAT LANDING,
May 24th, '69.

Upon a final settlement of individual and partnership accts., had between us this day, the balance of 797.96, (seven hundred and ninety-seven $\frac{96}{100}$ dolls.) is due me in cash. Upon receipt of certificate deposit from S. H. Tucker, Little Rock, Ark., Messrs. Davis & Brooks, Wild Cat, Ark., will ship to order of Wm. B. Morris, atty. in fact for Waddy Thompson, ten bales cotton, weighing 4,873 lbs., free of any charge.

274 The acct. of R. H. Ober is estimated at 750$, and 5 bales cotton sold by W. Thompson at 500; assumed by Waddy Thompson at these figures. Any variation that may appear or final results of these accts. to be equally divided between us; Wm. H. Bowcock to make settlement of Mr. R. H. Ober' account, and remit note therefor to Waddy Thompson, New Orleans, La.

Pro *pro* WADDY THOMPSON.
WM. B. MORRIS.

$803\frac{43}{100}$ d'ft.

Exhibit R to deposition of Morris.

This is Exhibit R, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

R.

Waddy Thompson in account Wm. H. Bowcock & Co.

275

		Days.	Interest.	Amount.
	CREDITS.			
May 25, '69.	Bal. due as per acct. rendered			2,443 93
M'ch 2, '68..	Nett amount stock & implements, 953.71—25.	1 & 84	114 54	928 71
Oct. 28th....	Plows & harness bought	210	4 37	75
			118 91	118 91
				3,569 55
	DEBITS.			
May, '69	Chas. Wikerson's acct. assumed			698 66
"	R. H. Ober's acct. estimated			750 00
	Acct. sales, 5 b. c.			500 00
	Balance at credit of Waddy Thompson			1,617 89
				3,566 55
May, '69....	Balance at credit of Waddy Thompson			1,617 89
	W. H. Bowcock, personal acct.			525 88
	Bal. due W. H. Bowcock			797 96

	Balance ⅔ gains on Clear Lake			1,272 03
				4,213 76
	CONTRA.			
May 24	19 b. c., 9,545 @ 21½		2,052 17	
	11 " 4,843 @ 23 c		1,113 89	
	10 " 4,873 @ 21½ c		1,047 70	
			4,213 76	
May 24	Balance at credit, profit & loss		1,272 03	

Wild Cat, May 24th, '69.

WM. B. MORRIS,
Atty. for Waddy Thompson.

276 *Wm. H. Bowcock in acct. with Wm. H. Bowcock & Co.*

		Days.	Interest.	Amount.
1868.				
March 2nd	1 bbl. m. pork, 30; cash, 150; 1 mare & mules, 600—780. Sundry implements, 210.23; rope, 240—212.63	1 & 84	125 41	1,017 13
April 20	Hay & corn, 396; bedstead & pitcher, 4.25	1 & 36	4.3 33	400 25
June 30	Cash-dr'ft on W. T. & Co	330	10 08	110 00
July 31	" " 165$, 50$	297	17 73	215 00
Aug. 2	Osborne, 2.25; Dr. Summers, 1.75	296	33	4 00
Feb. 1	37 bush. corn sold Barber	17 & 89	4 62	37 00
Aug. 31	Coat & pants sold Hand	267	67	7 25
Oct. 5	Cash drawn at Memphis	233	8 33	125 00
May, '69	Dillon's draft charged			127 09
"	Services on plantation			1,000 00
"	Balance of interest at credit			188 03
			210 53	3,230 66
	DEBITS.			
Aug. 15	Paid J. B. & G. B. Barber		22 50	300 00
May, '69	Accts. assumed, 267.52, 111.42, 61.99, 15.56, 80.00, 223.70			760 19
"	J. B. & G. B. Barber's acct. assumed			100 00
"	1 mule, 76.50; 1 do., 117$; 1 horse, 50; 1 mule, 4; 1 horse, 60; 1 wagon, 60			403 50
"	Balance of interest at credit		188 03	
"	" acct. at credit of W. H. Bowcock			1,666 97
			210 53	3,230 66
May, '69	Balance at credit, W. H. Bowcock			1,666 97
	Cash for sundry expenses			103 08
	Interest on 11 b. c., 1,607 @ 23 c			369 61
	Balance gain on Clear Lake place			1,272 03
				3,411 69
277	CONTRA.			
May	⅓ of 17,887 bls. cotton @ 23 c		2,057 00	
	Davis & Brooks' ⅓ assumed		30 85	
	W. H. Bowcock' acct. with Waddy Thompson		528 88	
	Balance ⅔ due from Waddy Thompson		797 96	
			3,411 69	

Wild Cat, May 24th, '69.

WM. B. MORRIS.

Exhibit S to deposition of Morris.

This is Exhibit S, referred to in the deposition of William B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

S.

LA., *October* 3, '68.

Messrs. R. H. OBER & CO., *New York:*

DEAR SIR: Agreeable to instructions of our Waddy Thompson of 28 ultimo, advising that he had arranged with you for settlement thereof, I now enclose you contract dated—

"LITTLE ROCK, ARK., *Feb. 29th*, 1868.

"I hereby agree to furnish Waddy Thompson, through Messrs. Lewis, Vanson & Co., supplies for plantation during this year, as needed,
278 to the extent of two thousand dollars, in pork or other supplies, at cash prices, at St. Louis; commissions to be charged. (Signed) R. H. Ober."

and of which please acknowledge reciept.

Yours, truly,

WADDY THOMPSON,
By WILLIAM B. MORRIS.

Exhibit T to deposition of Morris.

This is Exhibit T, referred to in deposition of Wm. B. Morris.

CHAS. S. RICE,
U. S. Comm'r.

T.

(Copy.)

Received from W. B. Morris, attorney in fact, the following:

Claim vs. A. S. Dillon, as per statement rendered	$958 66	in garnishment.	
" due from Wm. J. Probst & Com., on cotton-contract	540 00	"	"
" certificate of deposit sent to Pike & Adams	400 00	"	"
" in hands of Garland & Nash, estimated at	1,300 00	"	"
" note due from C. C. Wells, Oct. 25th, '69	855 83	"	"
" due from Chas. Wilkerson, 8% current rendered	525 00	"	"
" due from R. H. Ober, as per note due Feb'y 1, '70, (to be sent)	677 00	"	"
" note due from Bostick & Ryan, due Dec. 1–4, '68	835 00	"	"

Subject to the following conditions and understanding: A collection of above claims, notes, and accounts is to be made by me, expeditiously as possible, and the amts. so realized to be held in trust until a
279 final decision be had in a case at law now pending against Waddy Thompson in favor of Receiver Mosby, of the Gayaso Bank, Memphis, Tenn. Now, if judgment and execution be rendered against Waddy Thompson in this suit, the above claims or proceeds thereof shall be liable therefor; but if said suit be decided in favor of Waddy Thompson by reason of any offsett plead by him in court, then the proceeds of the above claims, after payment of fees and charges incurred, shall be held for acct. of and subject to order of Wm. B. Morris.

(Signed) E. H. ENGLISH.

Original sent to W. T., June 23, '70.

Exhibit A to deposition of Charles Gallagher.

This is Exhibit A, referred to in deposition of Charles Gallagher.
CHAS. S. RICE,
U. S. Comm'r.

A.

LITTLE ROCK, ARK.,
January 29th, 1868.

Mr. CHARLES GALLAGHER,
No. 190 Gravier Street, New Orleans, La.:

SIR: On the 15th January, 1867, I executed to John T. Fleming ten notes, for $6,000 each, the first due 1st March, 1867, and the
280 others annually thereafter. These notes were executed upon their face for the Fleming plantation, in Prairie and Pulaski Counties, Arkansas. John T. Fleming gave me a deed, warranting me a good title to 4,000 acres of land. Since then I have ascertained that the quantity of land falls short by about 1,000 acres, and that the title to nearly all of the remainder has proven invalid. The note first due was paid before these failures in quantity and title were ascertained. Having been informed that the other notes have been assigned to you you are respectfully notified that the consideration for which the notes were given having failed, the notes will not be paid.

Respectfully,

WADDY THOMPSON.

A true copy of the original served by William B. Morris, at New Orleans, on Feb. 6th, 1868.

Exhibit B to deposition of Chas. Gallagher.

This is Exhibit B, referred to in deposition of Charles Gallagher.
CHAS. S. RICE,
U. S. Comm'r.

B.

LITTLE ROCK, *4th Feb.*, 1868.

281 CHAS. GALLAGHER, Esq.,
New Orleans:

DEAR SIR: Yours, 24th, received. In reply to which I would say that I fully appreciate your kind proposition, but I notified you a few days since that the consideration for which those notes were given has failed, and no part of them will be paid by me.

Very respectfully,

WADDY THOMPSON.

General depositions.

The following depositions were read, generally, on the final hearing:

1. State your name, age, residence, and occupation.
2. State whether you know the parties to this suit.
3. State whether you are the person who formerly owned the Clear Lake place, in Pulaski and Prairie Counties, Arkansas, and who subsequently sold the same to defendant Thompson.
4. State who has been your attorney in Arkansas for some years

past, and the extent of his retainer as such; whether the same
282 was general or special.

5. State whether said land or any part of it was sold under any judgment rendered in the Prairie County circuit court, Arkansas, and in whose favor, and when the said judgment was rendered, and who was your attorney to attend to said cause, and whether you had paid your attorney any fee for services in such case; and, if so, how much, and how and when, and what evidence have or had you of such payment.

6. State whether you were advised before the sale of said land that the same had been levied on and would be sold.

7. State when and by whom you were first advised of the sale of said land.

8. State whether you made any arrangement to meet said judgment; and, if not, why you failed to make any such arrangement.

9. How long have you been residing in the State of Tennessee?

WATKINS & ROSE,
For Plff.

283 X-interrogatories:

1st. Give your full name, your residence precisely, and your occupation entire.

2d. State why you sold the Clear Lake place to Waddy Thompson; when and for what price.

3d. State exactly in and for what business your said attorney was employed, and how much you paid him, and all about it.

4th. Attach to your deposition receipts or copies of receipts of all payments made by you to your said attorney.

5th. If you had an attorney to attend to the matter of your land named in the 5th interrogatory, state fully what instructions you gave him in reference thereto.

6th. How were you first advised of the sale of said land named above?

7th. When did you cease to be a citizen of the State of Arkansas?

284 8th. How much have you been paid on the purchase of the said Clear Lake place?

9th. In answering the several interrogatories above, give full details how & through whom you received your information, and all the facts and circumstances connected with the matters stated by you.

10th. To what extent are you interested in the result of the aforesaid suit?

GARLAND & NASH, *for Defts.*

To the fifth interrogatory, from the word "state," in the beginning, to the word "rendered," and inclusive thereof, on the second page, 5th line, defendants except, as it relates to matters that should be proved otherwise than by said Fleming.

GARLAND & NASH.

Deposition of T. J. Fleming.

Examination-in-chief:

1st. The first interrogatory he answers as follows:

Ans. My name is John T. Fleming. I am 47 years old. I re-
285 side in Williamson County, Tennessee, about 6 miles from Franklin, & I am a farmer.

2d. To the 2d interrogatory he answers, &c.

Ans. I do.

3d. To the 3d interrogatory he answers: I am.

4th. To the 4th interrogatory he answers: There were only two instances in which I had any occasion to employ an attorney in Arkansas. One was to defend a suit brought against me in Prairie circuit court, in said State, shortly before the breaking out of the war, in the latter part of 1860, or in the early part of 1861—I am not certain about the date—by Jordan N. Embree, of Jefferson County, in said State; and the other was to perfect my titles to some of the lands composing the Clear Lake place, referred to in the 3d interrogatory, which had been entered previous to the war, but no deed or patent had been issued from the State on such entries. Some of the lands had been patented. I think most of such entries were made by me, and the patents had issued on the lands entered by Bradshaw, of whom I purchased said Clear
286 Lake place. To perform this service I employed Judge E. H. English, of Little Rock. When I was sued by Jordan N. Embree, as before stated, I employed Capt. Wm. Jones, of Brownsville, Prairie County, Ark., to defend that suit. He soon after went off in the army, and all further proceedings in said suit were stopped by the war.

5th. To the 5th interrogatory he answers:

Ans. I cannot answer this interrogatory satisfactorily with giving a statement of the matters inquired about in detail: In 1857 or 1858, I had become security for James B. Stone, of Jefferson County, Arkansas, to the said Jordan N. Embree, growing out of the purchase by Stone of the steamboat Rock City, and on account of the expenses of running said boat, the amount of which was unliquidated. After said suit had been commenced, and some time in the early part of the war, I do not recollect the precise time, said Embree sent an agent, Winfrey Bond, up to the Clear Lake place, where I resided, with a letter to me in which he proposed that, if I would pay a certain sum stated, which was between four and five hundred dollars, but the precise amount I do not
287 recollect, he would take it in full payment of said claim on which he had brought suit against me, & that the suit should be stopped. I asked Bond if he would give me a receipt for the money. He said that he would do so, & when I paid him the money he gave me a receipt, & told me "that would be the last of it." The purport of that receipt was that the amount received was in full settlement of the claim of said Embree against the Rock City, & which was the same claim about which said suit had been brought against me. I paid said sum of money in current funds at that time, which may have been La., Tenn., or South Carolina bank-notes. I do not remember which; it was not paid in confederate money. I supposed said suit was at an end until as as hereinafter stated. As to my employment of Judge English in connection with said Clear Lake lands, it occurred as follow': In the early part of January, 1867, when I sold said Clear Lake place to Waddy Thompson, the deed and papers were drawn up by Judge English. There was a good deal of work about it, and I asked him what I had
288 to pay him. He told me I had been kind to his family during the war, & he would not charge me anything for that work, but he said he was "hard up" for money, and I would have to have my titles to some of said lands perfected, & that if I would pay him a hundred dollars he would attend to procuring the patents from the State. I agreed to do so, paid him the hundred dollars, & took his receipt therefor, expressed to be for the purpose aforesaid. Said receipt is not in my possession. When I was at Little Rock in April, 1870, I left said

receipt with Elijah B. Thompson to hand to Messrs. Watkins & Rose. In March, 1867, I was in New Orleans; arrived there on the 10th of March; while there I let Mr. Charles Gallagher have the last nine of the notes executed to me by Thompson for the purchase of said Clear Lake place. I returned home; that is, near Franklin, Tenn., in April, 1867, & in June, 1867, I went to Arkansas. As we went up the Arkansas River I found the country generally overflowed & I did not go away from Little Rock. I had left some unsettled business there, which I went to settle up. I remained but a few days in Little Rock, & on my way
289 down the Arkansas River the boat I was on stopped at Pine Bluff, & just as the boat was about pushing off from the landing some man, whom I do not know, came on board & served a writ on me. I did not read the writ or have time to read it, & only know what it was as he read it or stated it to me, the purport of which was that it required me to appear at the Prairie circuit court to answer the suit of Jordan N. Embree. As well as I recollect I was required to appear in October following. Said Embree lived in Jefferson County. That was the first notice or intimation I had of any such suit after the matter was finally settled as before stated. That was June, 1867. I returned home to Tenn. with the expectation of going back to Arkansas just as soon as it was necessary for me to be there to defend said suit. In Sept., 1867, I was severely injured in my feet by a fall from a house I was building. The day that I was injured Mr. Charles Wilkinson was at my house. He was living in or about Little Rock, & we had arranged to leave on the following day or on the next train for Arkansas. Wilkinson
290 married in Little Rock, & was a partner of Waddy Thompson in his trading operations about there. I was going to Arkansas to defend said suit of Embree against me. Wilkinson left my house the next day after I was hurt. Before he left I told him to employ Judge English for me to defend that suit, & that as soon as I got at myself I would send him some important papers I had relating to it. In a few days afterwards, & in time to reach there before the court was to be held, I enclosed said papers by mail to said Charles Wilkinson, to the care of Judge E. H. English, at Little Rock, Arkansas. Said papers were the letter of said Embree to me, & the receipt of his agent, Winfrey Bond, hereinbefore referred to. I did not recover from my injuries for several months. I went to Arkansas again, & before I was entirely recovered so as to be able to walk about, in the spring of 1868, to attend to my unsettled business. I was in Little Rock in March or April 1868. The first person I went to see was Judge English, and learned from him that said Clear Lake lands had been sold under execution on a
291 judgment of Embree against me. I told him about having sent those papers to his care, as before stated, and asked him if he received those papers, & who had defended the Embree suit. He told me he had never received any such papers. I thought he seemed disinclined to talk to me; so much so, that I left his office & spoke of it to some of our friends, more especially to his brother Judge Noah D. English. I went back to the office of E. H. English again, when he told me that he had bought in the place & had bought it in for Thompson, and said to me, "Fleming, it will be all right between you and Thompson." I then told him I would see Thompson at Memphis on my return home. The occasion just referred to was the first time I ever heard of said Clear Lake place being sold under execution, or of said English having bought it. When I passed through Memphis on my return home Thompson had gone to New Orleans, and I did not see him. After said Wilkinson left my house in 1867 I never saw him until I went to

Arkansas in the spring of 1869. He was not about Little Rock
292 when I was there in the spring of 1868. When I saw him I asked
him about that suit of Embree. He told me he had overstayed his time in Memphis and could not deliver my message in time to Judge English. I asked him about those papers I had sent to him to the care of Judge English, & he said he never had received them.

As to said papers I do not know where they are or what ever became of them, after I mailed them to Little Rock. I am positive in my statements about having settled said claim of Embree. Thomas J. Barnes, residing, the last time I heard of him, in Jefferson County, on the Little Rock & Pine Bluff road, was at my house at the time I paid the money to Bond, and witnessed the transaction. I never heard of any judgment being rendered against me in favor of Embree until Judge English told me, when I was in his office at Little Rock, in the spring of 1868.

In the spring of 1869 I went again to Arkansas when I heard that R. H. Ober was cultivating said Clear Lake place that year. While
there, I was on the Clear Lake place and saw Ober in possession
293 of it, when I learned from Ober that he had bought the
place & had taken it for a debt of a certain amount, which he stated, but I do not remember the amount which Thompson owed him. That was the first I had ever heard of said Ober ever having bought the place.

6th. In answer to the 6th interrogatory he states:

Ans. I was not.

7th. To the 7th interrogatory he answers:

Ans. By Judge E. H. English, as explained in my answer to the 5th interrogatory.

8th. To the 8th interrogatory he answers:

Ans. I made none, because I knew nothing of any such judgment until the time when I heard that said lands had been sold.

9th. To the 9th interrogatory he answers:

Ans. I was born and raised in Tennessee, & have resided where I do now ever since the 1st of December, 1865.

Cross-examination:

1st. To the first cross-interrogatory he answers:

Ans. I have already done so.

2d. To the 2nd cross-interrogatory he answers:

Ans. I sold said place to Waddy Thompson because it was
294 for sale. I was living in Tennessee & wished to dispose of it. I
was tired of trying to raise cotton, & I was willing to sell it to him on the terms he offered. Said sale was made about the 1st of January, 1867, for the price of sixty thousand dollars, ($60,000.00,) for which Thompson gave me his ten notes of six thousand dollars each, payable in ten annual installments without interest, payable on the first day of March in each year, & commencing on the first day of March, 1867.

3d. To the 3d cross-interrogatory he answers:

Ans. I don't know that I can answer this cross-interrogatory more explicitly or fully than I have done in my answer to the 5th interrogatory-in-chief, & refer thereto.

4th. To the 4th cross-interrogatory he answers:

Ans. I cannot do so because said papers are not in my possession, as explained in my answer to said 5th interrogatory-in-chief.

5th. To the 5th cross-interrogatory he answers:

Ans. The only instructions I gave were in a message which I sent to

Judge English by Wilkinson, which he told me he did not deliver, and about the same in my letter to Wilkinson, to the care of Judge
295 English, at Little Rock, inclosing said letter & receipt, which Judge English told me he never had received. Those instructions referring to said letter & receipt were to the effect that I had paid the claim of Embree & did not owe him anything, as hereinbefore stated.

6th. To the 6th cross-interrogatory he answers:

Ans. By Judge E. H. English, in conversation with him in his office at Little Rock, in the spring of 1868.

7th. To the 7th cross-interrogatory, he answers:

Ans. I lived in Arkansas most of the time for about ten years prior to December, 1865. About that time I rejoined my family in Williamson County, Tennessee, & ceased to be a citizen of Arkansas, though I have been back there since on business, & spent a good deal of the year 1866 in Arkansas, attending to my planting operations on Red River.

8th. To the 8th cross-interrogatory he answers:

Ans. I do not remember the precise amount, but it was about forty thousand dollars ($40,000.00) in all, including the first payment of six thousand dollars, ($6,000.00,) which I got from Thompson, due
296 about the first of March, 1867, and the proceeds of the other nine notes of Thompson, discounted by Charles Gallagher, in New Orleans, in the spring of 1867.

9th. To the 9th cross-interrogatory he answers:

Ans. In answering the several interrogatories above, I have endeavored to give full details, & how, & through whom I received my information, and all the facts and circumstances connected with the matters stated by me, and do not know of any other material matter or thing in addition to what I have already stated respecting the matters inquired about.

10th. To the 10th cross-interrogatory he answers:

Ans. I endorsed said notes of Thompson when I sold them to Charles Gallagher, & to that extent I am interested in having him subject said Clear Lake lands to their payment.

JOHN T. FLEMING.

Sworn to & subscribed before me this 25th day of February, 1871.
H. P. FOWLKES, *J. P.*

297 *Deposition of Wm. Goodrum.*

Testimony of William Goodrum.

WILLIAM GOODRUM, being duly sworn, deposes and says:

I was clerk of the Prairie County circuit court, at Brownsville, Prairie County, of the August term, 1867. That was the term at which the plantation known as the Fleming place, then owned by Waddy Thompson, was sold, under execution, upon judgment in favor of J. M. Embree against John T. Fleming, rendered at the February term, 1866, of the Prairie County circuit court, for the ($643) six hundred and forty-three dollars debt and ($63) sixty-three dollars damages, with costs of suit. Judge E. H. English, of Little Rock, was present at that term of the Prairie County circuit court, and expressed a good deal of surprise at there being such a judgment; and finding that the lands were about to be sold under execution against Fleming, I think he said that he had drawn the papers, which I know were in his handwriting, relative to the

sale of said plantation from Fleming to Thompson. He was aware of the fact that said judgment was a lien on said lands, and
298 was interested, as concerned about it. I remember that he got me to examine the judgment-docket, in order to satisfy himself as to whether the judgment was a lien or not. Neither Fleming nor Thompson were present at that term of the court. Fleming I know very well; Thompson I do not. I knew that Thompson lived in New Orleans; and in talking with me about the matter, Judge English spoke of having made some arrangement with the sheriff to hold it up until he could send him the money, and that he would draw a draft on Waddy Thompson for the amount of the execution. I think that Judge English at the time gave as a reason for interesting himself in the matter *was*, that he had drawn the papers in the sale between Fleming and Thompson, and was disposed to act as the friend of both parties. What I have testified to was said and done on Monday forenoon before the sheriff's sales. At the sale of these lands they were bid off by Judge English for the amount of said execution, and a deed made to him by the sheriff
299 for said lands, which deed was left with me to hold until the sheriff got the money, and I afterwards recorded said deed.

Cross-examination:

The conversation referred to in the examination-in-chief; Judge English stated that he would take the deed in his own name, to protect himself in the event the money was not paid by Thompson or Fleming.

WM. GOODRUM.

Deposition of J. R. Gray.

Testimony of J. R. Gray.

J. R. GRAY, being duly sworn, deposes and says:

I have heard the deposition of Mr. Goodrum, and with the exception of one part, where he spoke of examining the judgment-docket, *of* which I know nothing about, his deposition is substantially according to my recollection of what occurred. On Monday forenoon, before my sheriff's sale took place, the matter was arranged between Judge English and myself; he was to bid the full amount of the execution and costs
300 and draw on Waddy Thompson at New Orleans for the money. I agreed to make the deed to him, and for Mr. Goodrum to hold it until he sent me the money, which he afterwards did. In the conversation between us he spoke of having drawn the papers for the sale of the Fleming plantation from Fleming to Thompson; that he was on friendly terms with those parties; he said he was agent and atty. for Thompson, and had full control of those lands; said he was attending to Thompson's business in regard to that farm; he said that his object was to protect Thompson's interests, and he also said he wanted to protect his own interest in the matter; said he had been Thompson's atty, and Thompson owed him money as fees, and that he would take the deed to the lands in his own name, to protect his own interest, and that if Mr. Thompson would do what was right with him and pay the money he would let Thompson have the land back. Fleming was not there at that time, and my impression was that he was in Middle Tennessee. When the sale came on I think the tracts were put up and sold separately and were bid off by Judge English, who bid the full amount
301 of the execution and no more. My impression is (but about which I am not positive) that when the sale was about to be made, Judge

English made some explanation of the matter, and the arrangement that had been made between us, to the bystanders present. My recollection is that he was the only bidder on said lands.

J. R. GRAY.

Examiner's and witnesses' fees, $20.00, settled in full by complainant, in presence of—

WM. S. McCULLOUGH,
Examiner.

Defendants' depositions.

The following depositions were read on behalf of the defendants, on the final hearing:

The deposition of B. F. Kerr, taken on the 4th day of March, 1872, at the office of the clerk of the circuit court of Monroe County, in the town of Clarendon, county of Monroe, and State of Arkansas, to
302 be read as evidence in an action between Charles Gallagher, plaintiff, and Robert H. Ober and others, defendants, pending in the United States circuit court, in chancery, eastern district of Arkansas.

Deposition of B. F. Kerr.

B. F. KERR, having been first sworn by me, deposes as follows, in answer to following interrogatories:

Where do you reside?

I am a resident of Monroe County, Arkansas.

What is your age?

I am forty-two years of age.

What is your occupation?

I am a farmer.

Do you know anything in regard to the purchase, by R. H. Ober, of a certain plantation known as the Clear Lake plantation, formerly owned by J. T. Fleming? If so, please tell what you know and how you know it.

Answer. I do. About February, 1868, R. H. Ober came to my house and requested me to accompany him to Little Rock; that he was a perfect stranger there, and knew no one in the State but myself, and wanted my advice in regard to some lands he proposed purchasing.
303 On reaching Little Rock we went to see Judge English, who represented that he had purchased at sheriff's sale under judgment and execution (at the same time exhibiting the sheriff's deed) all the lands of the Clear Lake plantation lying in Prairie County, (being the same purporting to be conveyed by one Fleming to Waddy Thompson;) that he had examined the judgment and the advertisement of said lands before the sale, and found it all regular against said Fleming, and older than the conveyance by Fleming to said Thompson; that he bought all the said lands at said sale, which he, said English, paid for and took the deed from sheriff. Some months afterwards the said Thompson requested him, the said English, that he would reconvey to him, the said Thompson, or party named by him, the lands, upon his paying him the purchase-money with cost, &c. This the said English represented that he utterly refused to do, and that it was his intention to hold said lands for his own use, provided that the defendant
304 R. H. Ober had been satisfied in regard to a debt due to him, the

said Ober, for which he, the said English, had represented to said Ober that he held securities subject to his, Ober's order, that were ample to satisfy the debt. The said English then told said Ober that inasmuch as he believed that he, said Ober, relied on the securities that he, said English, represented as good in letting out his money, and that said securities had failed and become utterly worthless, that he, the said English, would convey to him, said Ober, the lands as purchased at the sheriff's sale, upon payment by said Ober of the sum he had paid at sheriff's sale, with a further amount to satisfy him, said English, for his services and attention on his, said Ober's behalf, which said Ober agreed to, and received the deed, and, as I believe, paid the money, amounting to about two thousand dollars, to the best of my recollection.

State who was present at this interview?

Answer. The defendant R. H. Ober, Judge English, and myself.

Did you have any other interviews when other parties were present? If so, state what took place, and who were present.

305 Answer. There were subsequent interviews with the same parties mentioned in my answer to the last interrogatory, at which Waddy Thompson was present. At an interview on the same day, or day after the time referred to in my last answer, at which the said Waddy Thompson was present, it appeared that said Waddy Thompson was indebted to said Ober in a sum amounting to near thirty thousand dollars, and the only offer he made for the liquidation of said debt was the lands lying in Pulaski County, which he had acquired from J. T. Fleming, which he said he would convey to said Ober by warranty-deed, provided said Ober would give him a clear receipt against the debt, stating that that was all he had and all he could do. This was agreed to by said Ober, and said Thompson executed his deed, naming a consideration as large as was believed by Judge English to be the value of *of* said lands at the time, to wit, about $5,000.00, and for which said Ober gave said Thompson a release.

306 Question. For what purpose did the defendant Ober desire you to accompany him to Little Rock, and what agency had you in the matter?

Answer. The defendant Ober stated he was a perfect stranger in Little Rock, and being acquainted with me a long time, requested me to accompany him to Little Rock to assist him in the transaction, and recommend such parties of my acquaintance on whom he could rely as his attorneys, and I recommended Judge English, and told him, the said defendant, that he could rely on any statement that the said English would make. I farther represented to the defendant Ober that if the sale under the execution was regular, of the regularity of which the said English would fully advise him, I would rather have a conveyance made by said English, under the deed made by the sheriff to him, than any deed that could be made by anyone.

Question. What did Judge English state in regard to the Pulaski County lands conveyed by Thompson to Ober?

307 Answer. Judge English stated to defendant Ober, in my presence, that Thompson had paid some six thousand dollars of money on the purchase of the lands from Fleming, and failing to get any title to any except the Pulaski County lands; that that sum would be applied to those lands, and if a question should ever arise for adjudication, that commissioners would be appointed to say what the value of said lands were at the date of the conveyance, and if they did not value them above six thousand dollars, no lien or claim could ever be established; if more than six thousand dollars, the defendant Ober could pay the bal-

lance and the title, or he could demand and recover the amount, say six thousand dollars, paid by said Thompson, with interest from date of such payment; that Thompson had paid that sum and the Pulaski County lands were all the consideration received; that those of Prairie County had entirely failed.

Question. Did Judge English give any opinion to defendant, Ober, of the title of the Prairie County lands? If so, what?

Answer. In reply to a question by defendant Ober, Judge Eng-
308 lish stated that the title he held, purchased at the sheriff's sale, was good against the world, and the party holding under him was as good as his.

State anything else that you know in regard to this transaction.

I have already stated all that I recollect in my statement of what took place at the several interviews referred to.

Farther than this the deponent saith not.

B. F. KERR.

Interrogatories for defendant to E. H. English.

In the United States circuit court, eastern district of Arkansas.

CHARLES GALLAGHER
v.
THOMPSON & OBER.

Interrogatories to be propounded to Elbert H. English, esq., in the above cause, on the part of said Ober.

1st. Were you the attorney of John T. Fleming in a suit insti-
309 tuted against him by Jordan Embree, in the circuit court of Prairie County, Arkansas?

2d. Were you present at a sale of lands under a judgment rendered in said Prairie circuit court against said Fleming, in favor of said Embree; and, if you were, state all that occurred at such sale, and particularly what declarations or statements you made at such sale in reference thereto; and did you do or say anything at such sale to prevent or stifle, or that was calculated to prevent or stifle, free and open bidding for said lands?

3d. Did you bid at the sale named in the second interrogatory above? And, if you did, state all the facts or circumstances connected with your bidding, the reasons why you bid, as well as for whose benefit did you make such bid.

4th. Did the said Fleming ever request you, in person or by letter, to attend to the said suit of Embree against him, as named in the first interrogatory above?

5th. Examine the deposition of Mr. Morris in this cause, in be-
310 half of plaintiff, as well as the exhibits to such deposition which purport to be letters and receipts written and signed by you, and explain the same fully, and relate all the facts and circumstances connected with them as particularly as you can.

6th. State all the facts, as fully as your can remember them, in reference to claims you held in your hands to satisfy a claim of Ober against Thompson, what those claims were, and what you wrote said Ober in reference to them, and what, if anything, was realized from said claims to pay the claim of said Ober against Thompson.

7th. State fully all you ever communicated to the said Ober, verbally

or in writing, in reference to the purchase made by you of the lands sold under the judgment of Embree against Fleming aforesaid, and when these communications were had.

8th. If you know anything else material or important in this cause to either party, please state it.

GARLAND & NASH,
For Defts.

311 *Cross-interrogatories to E. H. English.*

CHARLES GALLAGHER, COMPLAINANT,
vs.
WADDY THOMPSON & ROBERT H. OBER, DEFENDANTS. } In ch'y.

Cross-interrogatories to E. H. English, esq., a witness examined by and on behalf of said defendant, R. H. Ober.

Cross-interrogatory No. 1. Were you cognizant of the sale of what is known as the "Clear Lake plantation," and lands situated chiefly in Prairie County and partly in Pulaski County, in this State, from John T. Fleming to Waddy Thompson; and, if so, how did you become so acquainted; when or about what time did said sale take place; and did said Fleming at or about the same time engage your services as an attorney at law to have his title to certain tracts or parcels of said lands perfected, by obtaining deeds or patents therefor from the State, on entries thereof made in the swamp-land office or other State land-office?

312 Interrogatory No. 2. If you have the data to enable you to do so, specify the tracts or parcels of said lands to which the title of said Fleming was at that time only equitable or otherwise imperfect or supposed to be so; also the tracts which you succeeded in having his title to perfected; also the tract or tracts, if any, to which his title remains unperfected; and, if any such there be, the nature of such defect or imperfection in the title; and state also what, if anything, was said or done at or about the time you drew up the deed and other papers respecting the sale of said Clear lands from Fleming to Thompson, indicating a knowledge or understanding on the part of said Thompson that the title of said Fleming to some or any of said lands was equitable or otherwise imperfect, and that you, on behalf of Fleming, would attend to having them perfected.

Interrogatory No. 3. From your knowledge or information respecting said Clear Lake lands, are you enabled to state whether said tracts or parcels thereof to which the title of said Fleming may be or

313 remain at this time unperfected into a legal title are improved or unimproved, and what is their relative value as compared with other portions of said ClearLake plantation? If so, please state the same by way of answer hereto?

Interrogatory No. 4. When, or about what time, whereat, and from whom, did you first hear of the assignment or sale and transfer by said Fleming to the complainant, Charles Gallagher, of the notes of said Thompson to Fleming, for the purchase-money of said Clear Lake plantation and lands?

Interrogatory No. 5. Were you present at Brownsville, the then county-seat of Prairie County, on or about the 19th of August, 1867, when said Clear Lake lands, or that portion of them situate in Prairie County,

were sold under execution on a judgment of the Prairie circuit court, in favor of Jordan N. Embree, against said John T. Fleming, rendered or appearing to have been rendered on the 21st day of February, 1866? If so, state what occurred on that occasion in connection with
314 said execution sale.

Interrogatory No. 6. State what you said on that occasion, or at any time preceding said execution sale, to any person or persons with whom you conversed on the subject of said execution sale or advertisement thereof, in terms or substance to the effect that, on coming out to court, you were surprised to find the Clear Lake lands advertised for sale on a judgment against Fleming; that you did not believe Fleming knew anything about it; that you had drawn the papers of the sale of the Clear Lake place between Fleming and Thompson; that you were a friend to both of them; that they were both out of the State at that time; that under the circumstances you felt called upon to bid the amount of the Embree judgment, and buy in the lands for Thompson; that the judgment was only for a few hundred dollars; that Thompson had given his notes to Fleming for a large amount, and he could deduct the amount he would have to pay to satisfy the judgment from
315 what he was owing Fleming on the land; and that the only difficulty you saw in the way was, whether you could get the sheriff, J. R. Gray, to take your draft on Thompson for the amount you would have to bid, or wait with you until you could write to Thompson and get him to send you the money or a draft for the amount, or in any other or like terms, tenor, or effect.

Interrogatory No. 7. Did you accordingly proceed to examine the records in the clerk's office at Brownsville, to satisfy yourself of the correctness of said Embree judgment, and make or have made a computation of the amount of principal, interest, and costs due or appearing to be due on the judgment, and arrange with said sheriff, J. R. Gray, on the day of sale, and before it took place, for him to accept your bid of the amount of said judgment, and wait for the money until you could write to Thompson at New Orleans and hear from him; and, if not so, how, or how otherwise or differently were the matters here enquired about done or arranged on that occasion?

316 Interrogatory No. 8. State whether said sheriff had on that occasion a large amount of property advertised for sale under various executions; whether said sale was numerously attended, or by a larger number of persons than usual; whether, when said Clear Lake lands came on in their order to be offered for sale on execution of said judgment of Embree against Fleming, did you or said sheriff, or both of you, announce to or in any way cause it to be understood by the crowd of persons present that you were going to bid the amount of the judgment for Thompson, the owner of said lands; and, if not, state how otherwise or differently the same was so announced or caused to be understood on that occasion?

Interrogatory No. 9. If you answer that on that occasion there was no announcement or giving out to the persons present, as enquired about in the preceding interrogatory, or otherwise or differently so announced, or caused to be understood, state if you know why or
317 how it was that you bid the exact amount of the principal, interest, and costs due, or appearing to be due on said execution in favor of Embree against Fleming, and that no other person bid or offered to give any more than you bid for said Clear Lake plantation and lands, and state whether the same were sold in a lump, or in separate tracts or parcels on that occasion?

Interrogatory No. 10. Did you, on your return to Little Rock from court at Brownsville, write to Thompson, and, if so, is the paper here following and made a part of this interrogatory, a correct copy of such letter?

(For letter see Exhibit P to the deposition of William B. Morris, ante, page .)

Interrogatory No. 11. State whether at the time of said execution-sale at Brownsville, as well as prior and subsequent thereto, you were the attorney at law, and also the agent or attorney in fact of said Thompson in Arkansas, and, if so, when or about what time were you
318 retained as such attorney at law, or employed as such agent or attorney in fact; are you still acting as such attorney at law in any suits brought by or against said Thompson in this State, and if you have ceased to be such agent or attorney in fact, when or about what time did such agency cease?

Interrogatory No. 12. State all the suits you brought or defended for said Thompson in this State, and what acts you performed as his agent or attorney in fact, especially in respect of paying taxes on said Clear Lake plantation and lands, renting out the same, attending to the collection of rents, attending to the shipment of rent-cotton, and making advances by drawing drafts on Thompson & Cummins, at Memphis, Tennessee, or Waddy Thompson & Co., at New Orleans, Louisiana, on shipment or consignments of other cotton to said firms, or either of them.

Interrogatory No. 13. State whether after the sale of said Clear Lake plantation and lands by Fleming to Thompson, and prior to
319 August, 1867, you were called on by the sheriff or collector of Prairie County to pay the taxes due on said lands for the year 1866; and, if so, whether you paid them, to what amount, and when or about what time, and whether you advised said Thompson of the same by letter. And, if so, what did you write him—to the effect or tenor that it was the duty of Fleming to have paid those taxes, but he had neglected it, and that they being a lien or charge on the lands you had paid them for him, (Thompson,) and he could charge the amount to Fleming and deduct it from what he would have to pay on the place?

Interrogatory No. 14. To whom was said Clear Lake place rented in or for the year 1867, and what amount of rent did the lessees agree and bind themselves, and by what kind of an agreement, and with what security, if any, did they bind themselves to pay such rent for said place for 1867?

Interrogatory No. 15. State what were the character of the
320 improvements, and number of acres of cleared land on said Clear Lake place in August, 1867, and what are now the extent and kind of such clearing and improvements, and whether said lessees, with a large force, and if you know how many hands were engaged in cultivating said Clear Lake place in August, 1867.

Interrogatory No. 16. Who rented said Clear Lake place in the year 1868, or who cultivated it in that year; and, if rented, for how much was it rented; and, if not rented, how or on what terms was it cultivated?

Interrogatory No. 17. Did you ever receive, or claim, or control as your own, or otherwise than as agent for said Thompson, any of the rents, or crops, or proceeds thereof, raised or produced on said Clear Lake place? If yea, specify how much, and when you so received the same?

Interrogatory No. 18. Did you ever assert any claim, or take

321 and have possession or control of said Clear Lake plantation and lands otherwise than as agent for said Thompson, or as your own property and hostile or adverse to said Thompson; and, if yea, state when and how, and under what circumstances you so took possession or asserted such claim?

Interrogatory No. 19. How many times were said Thompson and the defendant Ober at the same time or times together, or separately, here in Little Rock, or on said Clear Lake plantation, in or at any time during the months of October, November, and December, 1867, and January and February, 1868? Please answer according as you may know, or have heard the same from said Thompson and Ober, or either of them.

Interrogatory No. 20. Did you, at any time or times, know or understand, or have reason to know or understand, from said Thompson and Ober, or either of them, or from anything that they or either of them did, said, or wrote to you, that said Thompson requested, or desired, or was willing that you should convey said Clear Lake plantation
322 to said Ober? And, if yea, state how many times, and by what ways or means, and under what circumstances, you did have or have reason to have such knowledge or understanding.

Interrogatory No. 21. Was the notice from Thompson to complainant dated Little Rock, Arkansas, January 29th, 1868, and the letter from Thompson to complainant dated Little Rock, February 4th, 1868, and exhibited, marked A and 13, in the deposition of said complainant on file in this cause, or either of said papers, written in your office; and did you know of or advise the writing of the same; and was said Ober here in Little Rock, or at said Clear Lake place, at those dates or either of them?

Interrogatory No. 22. Were said Thompson and Ober, both or either of them, here in Little Rock, or at said Clear Lake place, on the 29th day of February, 1868, and when and how did said Thompson first earn from you that you had conveyed said Clear Lake place to said Ober?

323 Interrogatory No. 23. Did you know or understand from said Thompson or Ober, or either of them, at the time you conveyed said Clear Lake place to said Ober, or at any other time, that Ober was paying said Thompson for the place, or took it for what Thompson owed him, or that such debt was settled or to be settled in that way, or that Ober gave Thompson a receipt therefor?

Interrogatory No. 24. State dates, amounts, names of drawer, drawee, payee, and endorser of any draft or drafts received, or the proceeds of which were received by you from said Thompson and Ober, or either of them, at any time during the months of October, November, and December, 1867, and January and February, 1868.

Interrogatory No. 25. Were any of those drafts designed, or did they have the effect to re-imburse you the amount of your bid at said execution-sale, and expenses attending the same, and pay you in whole
324 or in part what Thompson owed you for services as attorney at law, and also as his agent in Arkansas; and, if so, how much did the same amount to in the aggregate?

Interrogatory No. 26. Were you, at any time, aware of the fact, or any such or like fact, that any such drafts, drawn or negotiated for your benefit, were drawn on advices that they were for advances on cotton to be shipped to the house of Thompson & Cummins, in Memphis, or of Waddy Thompson & Co., in New Orleans? And state, if you know or ever heard, whether any cotton went forward pursuant to such advices.

Interrogatory No. 27. At what time and in what way did you pay the amount of your bid at said execution-sale to said sheriff, J. R. Gray?

Interrogatory No. 28. Did you ever know or hear from said Thompson and Ober, or either of them, anything about Ober paying or agreeing to pay Thompson $2,000.00, or any amount in addition to the
325 $25,000.00, or whatever Thompson owed him, in consideration of any stock, farming-implements, &c., on said Clear Lake place, and also in consideration of his (Ober's) getting possession of said place in February, 1868?

Interrogatory No. 29. State what assets, claims, bills receivable, or other securities you had in your hands or subject to your control, belonging to said Thompson, or Waddy Thompson & Co., or Thompson & Cummins, or for their benefit, at any time between July, 1867, and March, 1868?

Interrogatory No. 30. When did said Ober telegraph you from New York to know what claims or assets belonging to Thompson you had in your hands, for the payment of what Thompson owed him, and what did he state in such telegram was the amount of such indebtedness?

Interrogatory No. 31. When was it that Ober first expressed or intimated to you any doubt about the solvency of Thompson or his ability to pay what he owed him, and when and in what way was it you
226 first communicated to Ober the fact, or your belief of the fact, that the claims in your hands belonging to Thompson, and upon which he (Ober) may have relied for payment of what Thompson owed him, were worthless or insufficient for that purpose?

Interrogatory No. 32. Did you at any time or times, and at what time or times, in any way, and in what way, learn from said Thompson and Ober, or either of them, that Ober, in the fall of the year 1867, and before he came from New Orleans to Memphis, and before he came from Memphis to Little Rock, and before he and Thompson went together to look at said Clear Lake place, had gone to New Orleans, and endeavored to effect a settlement of his claim against Thompson, and had failed to obtain payment of the same?

Interrogatory No. 33. Did you ever learn, and at what time and in what way, from said Thompson and Ober, or either of them, that Thompson had offered Ober $12,500.00, or any such sum, in money,
327 or the Clear Lake place, in payment of what he owed Ober, and that Ober chose to take the place, in preference to that amount of money?

Interrogatory No. 34. Are you aware, or in any way informed by Thompson and Ober, or either of them, in any way or at any time heretofore, of any other material matter or thing respecting the matters here in controversy, or which might be of benefit or advantage to the complainant in this suit?

Deposition of E. H. English.

United States circuit court, eastern district Arkansas, in chancery sitting.

CHARLES GALLAGHER, COMPLAINANT,
vs.
WADDY THOMPSON & ROBERT H. OBER, DEFENDANTS.

Deposition of E. H. English, given on interrogatories propounded on the part of Robert H. Ober, and cross-interrogatories by the complainant, on consent of parties:

328 1. Answer to 1st interrogatory. I was not the attorney of John

T. Fleming in the suit instituted against him by Jordan Embree in the Prairie circuit court, nor had I any knowledge of such suit or the judgment rendered therein against Fleming, until the 19th day of August, 1867. At the time I prepared the deed from Fleming to Waddy Thompson for the Clear Lake lands, part of them were in Prairie County and part in Pulaski. And on particular enquiry of Fleming, he positively assured me that there were no judgments, or other incumbrances against him, or upon the lands in Prairie County. He did not at that or any previous time inform me that he had been sued in the Prairie circuit court by Embree. Being at Brownsville on the first day of the August term of the Prairie circuit court, I picked up a Des Arc paper in Gantt & Brunaugh's office, and glancing over it, happened to see the sheriff's advertisement of the Fleming lands in Prairie County for sale under an execution against Fleming in favor of Embree, at which
329 I was very much astonished, remembering the positive statement of Fleming that there was no judgment against him in Prairie. I went to the clerk's office and examined the declaration, writ, and judgment, and found the writ duly served on Fleming, and the judgment rendered prior to the sale of the lands by Fleming to Thompson.

2. Answer to 2d interrogatory: I was present at the sale of the lands under the execution, and bid them off under the following circumstances, substantially as I now remember them: After examining the Embree judgment as before stated, I went to Mr. Grey, the sheriff, and asked him if he would not hold up the execution until I could write to Waddy Thompson (and perhaps I said to Fleming also) and procure money to pay off the execution, or endeavor to do so. Mr. Grey said he had no authority to hold up the execution, but referred me to Col. R. S. Gantt, then living at Brownsville, saying he controlled the execution. I went to Col.
330 Gantt, and made a similar request of him to the one made to the sheriff. He said that Bell and Carlton, of Pine Bluff, were the attorneys of Embree, and he was merely attending to the matter for them, and had no authority to hold up the execution. I then proposed to him that I would bid off the lands and be personally bound for the money, if he would wait, or until I could write to Thompson at New Orleans and see if he would furnish it. That the bid could stand until I could hear from Thompson, and if he furnished the money I would have the sheriff's deed made to him, and, if not, I would pay the money and take the deed to myself. I do not undertake, of course, to repeat the language used so far back, but this was the substance of what I proposed, and to this Col. Gantt consented. This agreement was stated to the sheriff, and he consented to wait on me for the money. I think I also mentioned the agreement to Mr. Goodrum, the clerk, and, perhaps, to Capt. Nash, who I think was rooming with me, though of this I am not positive. I do not remember of mentioning the matter to any one
331 else. I do not think I did or said anything publicly at the sale to prevent or stifle, or that was calculated to prevent or stifle free and open bidding for the lands. A great deal of land was sold on that day by the sheriff for nominal sums. The people assembled at the sale seemed to have no money. At least such was the general impression, and no disposition was manifested to compete in bidding at the sales. My recollection is that I did not have much fear that any one would bid for the Fleming lands more than I proposed to bid myself.

3. Answer to 3d interrogatory. I bid for the lands at the sale, as agreed with Col. Gantt, the amount of the execution, $844.70. No one else bid, or, so far as I now remember, manifested any disposition to bid, and the lands were declared by the sheriff sold on my bid. The circumstances

under which I bid for the lands, and the reasons why I bid, I have above stated in answer to the second interrogatory. I intended, if
332 Thompson furnished me the money to pay the bid, to have the sheriff's deed made to him; and, if not, to pay the bid with my own means, and take the deed to myself. I prepared and left with Sheriff Grey a form for a deed. On returning to Little Rock, I wrote to Waddy Thompson, at New Orleans, informing him of the Embree judgment, the sale of the lands, and of my bidding them off, and requested him to furnish me with the money to pay the amount bid for the lands, to which I got no reply. Some time after, and after *and after* I had had time to hear from Thompson, Col. Gantt called on me, and said the sheriff was not willing to wait longer, and I paid the money to him, and requested him to have the sheriff execute the deed to me, and deliver it to Mr. Goodrum to be recorded. The deed made to me by the sheriff bears date and appears to have been acknowledged on the 24th of August, 1867. But it was some time after this that I paid Col. Gantt the money. I do not remember the time. It seems from the sheriff's deposition that he executed the deed and left it with Mr. Good-
333 rum to hold until I paid the money.

4. Answer to 4th interrogatory. Fleming did not at any time, I am sure, request me in person to attend to the said suit of Embree against him, and if he did by letter, I did not receive such a letter. I saw him frequently between the close of the war and the date of the judgment, and between the date of the judgment and the date of his sale to Thompson of the lands, and if he ever mentioned the suit to me I have no recollection of it, and feel satisfied that he could not have done so, from the fact that I was surprised when I found, on the day of the sale of the lands, as before stated, that there was a judgment against him. If he had spoken or written to me to attend to the case for him I would have done so. Since writing the above, I have looked over the deposition of John T. Fleming in this case. He states that in September, 1867, he told Mr. Charles Wilkerson to employ me to defend
334 the Embree suit, and that in a few days afterwards he enclosed some papers relating to the case to Mr. Wilkerson in my care. Mr. Wilkerson did not mention the matter to me, nor did I ever see or receive the papers referred to, nor have I any remembrance that Fleming ever mentioned the matter to me at any time. He must have been laboring under some mistake or fault of memory about the matter when he gave his deposition, for the Embree judgment was rendered against him on the 21st of February, 1866, and he sold the Clear Lake lands to Thompson in January, 1867.

5. Answer to 5th interrogatory. I have read the deposition of Wm. B. Morris, given on behalf of the complainant in this case, and have examined the exhibits thereto, which purport to be letters and receipts, &c., written or signed by me. I may be permitted to remark, in general terms, and without undertaking to comment on Mr. Morris' lengthy deposition in detail, that in attempting to repeat confidential conversations which I had with him as a member of a firm for which I was
335 acting as an attorney, he has not repeated, in several instances, what I said to him accurately.

Exhibit B 1 to deposition of Morris is a draft drawn by me 26th Feb., 1867, on Waddy Thompson & Co., for seven dollars, in favor of Merchants' National Bank, Little Rock, to obtain money to pay for stamping and recording the deed from Fleming to Thompson for the Clear Lake lands. The draft of the deed was completed, as far as it could be done from the numbers of the lands then furnished me by Fleming, on

the 15th January, 1867, and on that day signed and acknowledged by him. He was to take it to Franklin, Tennessee, where his wife was, fill in the remaining numbers of the lands to make out the four thousand acres he contracted to sell to Thompson in a blank space left in the deed for that purpose, from deeds which he said were in her possession, have her to sign and acknowledge the deed there, and send it back to me by mail, when it was to be stamped and recorded. I received the deed back by mail about the 26th February, 1867, signed and acknowledged
336 by Mrs. Fleming, but the additional lands not filled in the blank left for that purpose. I, however, thought it best to stamp the deed and have it recorded, and, to obtain money for that purpose, made the draft referred to, and got the money from the bank under some arrangement made with the bank by Thompson before he left Little Rock.

Exhibit B No. 2 to the deposition of Morris is a draft drawn by me, in the name of Waddy Thompson, Feb. 27th, 1867, on Waddy Thompson & Co., in favor of Chas. W. Clark, cashier of the Merchants' National Bank, for twelve hundred and seventy-five $\frac{65}{100}$ dollars. Waddy Thompson made an arrangement with me to make advances on cotton, take mortgages, &c., to secure same, &c., and also made some arrangement with Col. McDonald, of the Merchants' National Bank, to furnish money for that purpose. The particulars of his money arrangements with Col. McDonald I do not know, nor do I suppose it to be material in this suit. But the above draft was made to procure money to advance on cotton purchased of or contracted to be delivered by Wm. Reynolds, and
337 to pay U. S. reve. tax on same.

Exhibit B 3 to the deposition of Morris is a draft drawn by Waddy Thompson in my favor for three hundred and ninety dollars on Waddy Thompson & Co., dated Little Rock, 31st March, 1868. I will state all that I can remember of this draft, or recall from my memorandum of personal transactions with Thompson, in answer to other interrogatories and cross-interrogatories.

Exhibit B 4 to deposition of Morris is a letter written by me to Waddy Thompson & Co., March 8th, 1867, in relation to the draft made Exhibit B 2 to the deposition of Morris above referred to, and shows what I drew the draft for, and what I did with the money. The letter explains itself on its face.

Exhibit B 5 to deposition of Morris is a letter addressed by me to Waddy Thompson March 8th, 1867, in which I informed him that Fleming had returned to me the deed for the Clear Lake lands executed by his wife, but no more lands inserted. That I had drawn on him for $70 to pay for stamping and recording the deed. Also refer
338 to the draft drawn to obtain money to advance to Reynolds on cotton to pay taxes, &c., above explained, &c. After Thompson purchased the Clear Lake lands of Fleming, he leased the cleared lands, &c., to Morris, Smith & Morris, and agreed to make them large advances to cultivate that and two other places, and took from them a deed of trust on cotton-crops in the prospective, stock, &c., &c., in which I was made trustee, and which will be referred to again below, and in this letter of mine of 8th March, 1867, which Morris makes Exhibit B 5 to his deposition. I state the death of Newton J. Smith, one of the renters, &c., and state some information that I had received in relation to the conduct, &c., of Parson Morris, another and the chief of Thompson's tenants, &c. When I wrote the lease and deed of trust, the aforesaid parson expressed a horror of the length of the instruments, &c., and I refer to this in the letter.

Exhibit C to the deposition of Morris is a letter addressed to me, by

W. F. Hicks, who was assisting Mr. Gray in the collection of the taxes of Prairie County, April 13th, 1867, a tax receipt, and a mem-
339 orandum made thereon by me April 17th, 1867, and forwarded to Thompson.

At the time Fleming sold the Clear Lake lands to Thompson, he not only stated to me that there were no judgments against him in Prairie County, but he also stated to me that he had paid the taxes for the year 1866 on such of the lands as were then in Prairie County. I found out in some way, I do not remember how, that this was not so, and procured the taxes to be paid by Mr. Wilkerson, who was related to Thompson. The letter of Hicks to me, the tax-receipt, and my memorandum thereon, will be understood after this explanation.

Exhibit D to the deposition of Morris is a letter I wrote to Waddy Thompson Sept. 5th, 1867, after my return from Prairie court, informing him of the sale of the lands under the Embree execution. There are expressions in this letter that are not in harmony with the full account of the sale and purchase of the lands given by me above in answer to the 2d and 3d interrogatories, but I have answered these interrogatories with this letter before me, and I cannot answer them otherwise
340 than I have done, substantially, consistently with the whole truth. My letter to Thompson only presented, and was designed only to present to him an aspect of the sale and purchase of the lands.

When I found, to my surprise, on going to Brownsville, that the lands were about to be sold by the sheriff, and began to think what action I should take in the matter, I did not think that I was legally bound to take any particular course, but I was friendly to both Fleming and Thompson, and the agent and attorney of Thompson in some other matters, and felt that I ought to do something to prevent the lands from being sold to a mere stranger. But when I found that the sheriff would not hold up the execution until I could write to Thompson, I determined that I would not pay off the execution and look to Fleming or Thompson to re-imburse me. Fleming had sold out and left the State, and I was not certain what Thompson's condition was. I knew he was an adventuresome speculator on a large scale. I determined also that I would not bid in the lands absolutely in Thompson's name, raise
341 the money on a draft drawn by me or him, and take sheriff's deed to him and run the risk of the draft being dishonored and coming back to me to be taken up. Hence I made the agreement with Col. Gantt and the sheriff, as before stated, that I would bid off the lands, let the bid stand until I could write to Thompson, and, if he furnished the money to pay the bid, have the deed executed to him; if not, to pay the money myself and have the deed made to me. And accordingly I bid off the lands; but in writing to Thompson I did not think proper to express to him my unwillingness to become responsible for the amount bid for the lands and to let the deed be made to him. When I stated in the letter in question that the lands were bid off in his name, and the sheriff's deed made to him, I meant simply to express the aspect that the matter would assume if he sent me the money to pay the bid or arranged to have my draft on him cashed. And I did not think proper to say to him that if he did not do this I would
342 pay the money to the sheriff and have the deed made to me, which in the sequel I did; or rather the sheriff had made it to me of his own accord in advance, and placed it in the hands of Goodrum, which was, it seems, a movement of his own outside of the agreement.

When I bid off the lands I did not state whether the bid was for my

self or for Thompson. The sheriff understood our agreement, and he struck off the lands on my bid simply. He did not think proper, nor did I, to explain the matter to the persons there assembled. I had explained the matter to a few persons, as above stated, but I did not deem any public explanation necessary.

Exhibit T to Morris' deposition is a receipt I gave to the aforesaid Morris. In an attachment suit brought by one Mosely, receiver of the Gayoso Bank, Memphis, against Waddy Thompson, he, the aforesaid Waddy, induced some twenty of us to become his surety in order to obtain a release of the property attached. Morris delivered to me the claims mentioned in the receipt, to indemnify Thompson's sure-
343 ties. As far as these claims have been or could be collected they have been applied as agreed in said receipt. I am at a loss to know what Morris thought that receipt had to do with the matters in controversy in this suit.

The above, I believe, are all of the exhibits to the deposition of Wm. B. Morris with which my name is connected.

6. Answer to 6th interrogatory. After Waddy Thompson had purchased the Clear Lake plantation of Fleming, he leased it to Morris, Smith & Morris, for fifty thousand dollars for five years, $15,000.00 payable 1st January, 1868, $15,000.00 1st January, 1869, $10,000.00 1st day of January, 1870, and $10,000.00 on 1st January, 1871, and agreed to make advances of money and supplies to them to enable them to cultivate that place, the McNeely place, and the James Morris place for the year 1867, which they had rented, and to secure the payment of the rent for the Clear Lake place, and the advances to be made by him not to exceed, as was stated in the contract, $15,000.00. Morris, Smith and Morris executed a deed of trust,
344 in which I was made trustee, upon the crops to be produced on said places, and upon a large number of cattle, horses, mules, hogs, farming implements, and upon some wild lands, &c. Under this contract Thompson unfortunately advanced to them, principally in the early part of the cropping season of 1867, about seventeen thousand dollars in money, supplies, &c. About June, 1867, I received a letter from Ober, Nanson & Co., of New York, stating that Waddy Thompson had applied to them for a loan of ten thousand dollars, and offered to secure the same by pledging securities in my hands, &c., and wishing me to advise them what these securities were, &c. I have no copy of my letter in reply, but my recollection is that I informed them that Thompson had purchased the Fleming place, leased it to Morris, Smith & Morris for fifty thousand dollars, and that they had executed to him a deed of trust to secure the rent, advances, &c., about as above stated. On the 25th June, 1867, I received a letter from Waddy Thompson, informing me that he had negotiated a loan from Ober, Nanson & Co., to
345 be carried out by their successors, R. H. Ober, & Co., for ten thousand dollars, and that he had pledged to them the securities, or a sufficient amount thereof, in my hands to secure the payment thereof in full, and directing me to account to them for the general proceeds of such securities, provided they did not acknowledge the satisfaction thereof to me, and stating that he contemplated the payment thereof from other sources. The whole lease and deed of trust proved to be a miserable failure and disaster, as I from the beginning apprehended it would be, from the character of the men who leased the place, &c. In the winter of 1867, finding that the tenants were making away with the cotton produced on the three places, by the aid of Thompson who came here, I procured a military order to place Maj. Tisdale and others in

possession of the three places. From the James Morris place we got no cotton; from the McNeely place we got, I believe, some nine bales, which the landlord claimed and sued Thompson for; from the Clear Lake place we gathered some thirty bales, but the expenses
346 about consumed it. In February I employed an auctioneer and went to the McNeely place, the Smith place, the Clear Lake place, and the James Morris place, to sell the cattle, hogs, mules, horses, farming implements, &c., wild lands, &c., embraced in the deed of trust, after duly advertising the same; but the tenants, &c., had disposed of, or scattered into the woods, some of the property, the sheriff of Prairie, under attachments against Morris, Smith & Morris, had seized other property, and the consequence was that I found but little to sell but the wild lands, which were bid in for Thompson at nominal sums, and I got nothing of consequence from the whole affair to hold for R. H. Ober & Co. Indeed, they got nothing through me from the proceeds of the trust. I had nothing worth accounting to them for. The whole thing was a failure and disaster, as above stated.

7. Answer to 7th interrogatory. I have no recollection of ever writing anything to Robert H. Ober about my purchase of the
347 Prairie County portion of the Clear Lake lands. When and just before I conveyed them to him, I stated to him briefly the circumstances under which I purchased them. There were some confidential matters, however, that had transpired between Thompson and myself in relation to these lands that I did not communicate to Mr. Ober. I will endeavor to state substantially, in answer to the 8th and last interrogatory, general in its character, propounded to me on the part of Mr. Ober, my connection with these lands from the beginning to the ending.

8. Answer to the 8th interrogatory. The contract between Fleming and Thompson for the sale and purchase of the Clear Lake plantation was concluded between the parties in my office in Little Rock, and reduced to writing, and signed by them on the 11th December, 1866. It was drawn up by my son, under my direction. It was as follows:

"Agreement for sale of lands, made and entered into this 11th day of December, 1866, by and between John T. Fleming, of Prairie County, Arkansas, of the first part, and Waddy Thompson, of New
348 Orleans, La., of the second part, witnesseth:

"That the said John T. Fleming agrees to sell and convey in fee-simple, with covenants of warranty and relinquishment of dower, to said Waddy Thompson, his entire plantation situated on both sides of Clear Lake, part of which is in Pulaski County and part in Prairie County, Arkansas, known as the Fleming plantation, consisting of not less than four thousand acres, with all improvements and appurtenances thereon and thereto belonging, for which the said Waddy Thompson agrees to pay him sixty thousand dollars in ten equal annual installments of six thousand dollars each, without interest, the first installment to be paid on the first day of March, 1867, and the others annually thereafter. The said Waddy Thompson is to execute to the said John T. Fleming ten promissory notes for said purchase-money of six thousand dollars each, payable as above indicated, and the said John T. Fleming is to execute thereupon to the said Thompson, his heirs and assigns,
349 a good and sufficient title for all the lands embraced in said plantation, with covenants of warranty and relinquishment of his wife's dower, in which deed of conveyance the said Fleming is to retain a lien for the purchase-money; said notes to be delivered and said deed to be executed as soon as said Fleming can procure the numbers of said lands

and obtain his wife's relinquishment of dower, she being now in Tennessee; this being intended as an agreement in writing to be binding on both parties, their heirs and assigns, until the deed can be executed. And it is further agreed that the notes of the said Thompson are to be now executed and placed in the hands of E. H. English, to be delivered to said Fleming when the deed is prepared, executed, and ready for delivery.

"The possession of said Thompson of said lands to commence 1st of January, 1867, when the lease of the present tenants expires.

"Signed and sealed by the parties the day and year first above written.

"J. T. FLEMING. [SEAL.]
"WADDY THOMPSON. [SEAL.]

"Witness:
"E. H. ENGLISH,
"P. D. ENGLISH."

350 When this contract was made, Fleming, as I remember it, stated that his title-papers, or most of them, were at the Lake place, and that he would get them and deliver them to me to examine and prepare the deed to Thompson. In the mean time, and about the 26th day of December, 1866, I went with Thompson to Newton J. Smith's, about twenty miles below Little Rock, where we met the Morrises, and I prepared the lease from Thompson to Morris, Smith & Morris of the Clear Lake place, and the deed of trust from them to Thompson (naming myself as trustee) to secure rent, advances, &c., before spoken of. These papers bear date 26th December, 1866, and were executed on that day, though I was engaged in writing them part of two days and a good deal of the intervening night. At some time between the 11th December and the 15th January, 1867, date not remembered, Fleming brought to my office a package of papers which he said were his titles to the Clear Lake lands sold by him to Thompson, and left them with
351 me to examine and prepare the deed to Thompson. I spent a number of days or parts of days examining these papers. After putting down the numbers of all the lands for which I found Fleming had any sort of title among the papers he furnished me, and adding several tracts taken from his tax-list, for which he furnished me no title-papers, but said his wife had the title-papers in Tennessee, I could make out but 3,537.63 acres instead of 4,000, which he represented to Thompson he owned, and sold to him, and contracted to make him a good title to. Fleming persisted in saying that he had 4,000 acres, and that the title-papers were in possession of his wife in Tennessee. It was then agreed between him and Thompson that I should write the deed and put into it all the lands that he appeared to have any title-papers for, and the several tracts that we took from the tax-list; that he would sign and acknowledge it here, take it to Tennessee, fill in the remaining lands from deeds in possession of his wife to make up the 4,000 acres,
352 and let her sign and acknowledge it there, and that he would send the deed back to me with the title-papers to the lands added. I wrote the deed on ruled legal cap, and left fourteen blank lines, into which Fleming was to fill, from deeds in possession of his wife, the additional lands, and return it to me. He signed and acknowled it here. Thompson's notes were delivered to him, and they both left, Fleming taking the deed with him. I received the deed back from Fleming by mail, signed and acknowledged by his wife, but no lands added or filled in the blank left for that purpose, and no title-deeds sent me, and no

explanation for the omission. I supposed at that time that Fleming was responsible. Thompson had leased the Clear Lake place to Morris, Smith & Morris. I did not know that Fleming had gone or was going to New Orleans to sell Thompson's notes, and I had the deed stamped and recorded, as before stated, supposing that Thompson in his settlement with Fleming could deduct from the purchase-money the value of the lands that were short, or for which there was no title. Hence
353 I wrote to Thompson briefly, March 8th, 1867, as before stated, that Fleming's deed, duly executed by his wife, had come safely back, but no more lands inserted, and that I had caused it to be stamped and recorded, &c.

Among the title-papers of Fleming were some certificates issued to himself and others for unconfirmed swamp-lands. He left these certificates with me to get the patents when the lands were confirmed, saying he would be back to Arkansas occasionally and furnish me with money to pay fees for patents, &c. He did not afterwards furnish me with any money, nor did I procure any patents, the lands not having been confirmed when I last inquired at the auditor's office. I have paid no attention to this matter since Ober purchased the lands. So matters stood until August, 1867. I have above given an account of my bidding off such of the lands as were in Prairie County at the sheriff's sale. To my letter of 5th Sept., 1867, informing Thompson of my bidding off the lands, &c., at sheriff's sale, I got no reply from him. In the following winter, when I saw him, he informed me that my
354 letter had been forwarded to him from New Orleans to Missouri, where he was spending the summer, but that he did not have the money to send me, &c. For the purpose of stating events in their chronological order, I had as well mention a fact here which I will find it necessary to refer to more than once hereafter in the course of this deposition. About the 5th of December, 1867, a Mr. Cumins, who was connected with Waddy Thompson in business at Memphis, came to Little Rock to look after their cotton matters, and while here, as I now remember it, he handed me a draft drawn by Waddy Thompson on Thompson & Cummins, Memphis, for one thousand dollars, payable to my order. On the 5th of December, 1867, the Merchants' National Bank of Little Rock discounted the draft on my endorsement. When I examined the cross-interrogatories propounded to me in this case by Judge Watkins, believing that some of them pointed to this transaction, I endeavored to procure a copy of this draft, and he himself finally handed me the following as a copy:

355 "$1,000.] LITTLE ROCK, 19*th Octo.*, 1867.

"At sight pay to the order of E. H. English one thousand dollars, N. Y. exchange, value received, and charge the same to account of

(Signed) "WADDY THOMPSON.

"To THOMPSON & CUMMINS, *Memphis.*"

(Endorsed:) "E. H. English. Pay C. P. Norris, cashier, or order, for collection and credit. Signed, A. McDonald, president. Paid to First National. Signed, Merrimon, clk.

I have no memorandum to refresh my memory about this draft except of the amount that I received from the bank, which was $997.50, and I

ascertained from the books of the bank to-day (28th October, 1872) the date on which the bank discounted it—5th December, 1867. The draft appears, from this copy, to be dated Little Rock, 19th October, 1867, but I do not think Thompson was here then, nor until some time after the draft was discounted, nor do I think he sent it to me by letter, but my recollection is that Cummins handed the draft to me. I suppose the material fact to be, however, that I got the money on the draft.

356 At some time in the winter of 1867–'8, perhaps in January, the date not remembered, I had a conversation with Waddy Thompson about the condition of his affairs. It was after I knew that the Morris, Smith & Morris rent and advancements were or would be a great failure and loss. I was impressed with the belief from this conversation, and from Thompson's statements about his losses, that he had failed and would probably become bankrupt. In this conversation we talked about my purchase of the Fleming lands in Prairie County, and it is the first conversation that I remember to have had with Thompson on that subject. If I had a previous one, it left no impression on my mind that enables me to remember it. In this conversation he asked me to convey the lands to his wife or his mother-in-law, and I declined. He then asked me to give him some private paper or memorandum that I would hold the lands in trust for him, &c., which I also declined. Believing then that Thompson would become bankrupt, I determined to hold the

357 lands in my own name for such future disposition as I might think proper to make of them.

On the 10th of February, 1868, I was at the Clear Lake place, selling out as trustee the wreck of property there under the deed of trust from Morris, Smith & Morris to Thompson, before referred to. There was a power in the trust to sell the lease on failure to pay rent, &c. I sold the lease from Thompson to Morris, Smith & Morris of the Fleming place, and bid it in myself for a trifle, no one else bidding. After the sale was over Mr. Bocock told me that he wanted to make an arrangement to cultivate the Fleming place for the year 1868. I told him that I had purchased so much of the place as was in Prairie County at execution sale in the previous August, and that a deed had been made to me by the sheriff for the lands, stating to him briefly the circumstances under which I had become the purchaser of these lands. I also stated to him that I had the impression that Thompson was going into bankruptcy, and that I had made up my mind to hold these lands at least un-

358 til I saw what would become of Thompson, and that he, Bocock, could have so much of the Fleming place as was in Prairie County, for the year 1868, free of rent if he would keep the fencing of the enclosed lands repaired and pay the taxes, and that for so much of the place as was in Pulaski County he could make his arrangements with Thompson.

About the 28th of February, 1868, Waddy Thompson and Robert H. Ober were in Little Rock, and requested me to meet them at the Anthony House after supper of that day. I accordingly went after supper to a room occupied by them in the Anthony House, or at least in which I found them. I will not attempt to repeat all that was said on this occasion, or the language used, but the substance of what occurred, so far as it is material to the present suit and as I remember it, was about this: Mr. Ober stated that he had been negotiating with Mr. Thompson for the purchase of the Fleming plantation on Clear Lake; that Thompson had offered to sell him so much of the place as was in

359 Pulaski County, and referred him to me as the owner or having the title to so much of the place as was in Prairie County; and

Ober asked me if I would sell him that part of the place. I replied, playfully, perhaps, that I would do so if he would give me as much as I would ask for it, or something of that kind. He then asked me if I thought my title was good against the lien retained in the deed from Fleming to Thompson for the purchase-money. I replied that I had purchased the lands under a judgment older than the deed from Fleming to Thompson. This was about the substance of all that was said on the subject at that time, as far as I can remember the conversation. When I left the room to go home Mr. Ober walked with me. He stated to me in substance, as I recollect it, that Thompson was indebted to him about thirty thousand dollars; that on the faith of a letter I had written to him in the previous spring about Thompson's securities, &c., in my hands, he had advanced to him largely; that Thompson had be-
360 come insolvent, and that his, Ober's, only chance to save himself was to purchase the Fleming plantation at low figures. I stated to him that I would convey to him my title under the circumstances if he would pay me a sum sufficient to cover all that Thompson owed me for fees, services, &c., and a reasonable amount for my trouble, &c. He asked me how much that would be, and I told him that I would be satisfied with about two thousand dollars, which he said he would give me.

On the next day (29th February, 1868) Thompson and Ober came to my office to have the conveyances drawn. Ober seemed still not to be satisfied about the lien in the Fleming deed to Thompson. Thompson assured him that his title was good to the Pulaski lands; that he had paid Fleming the first note of $6,000, and that, deducting the quantity of lands that Fleming had failed to insert in the deed, and the value of others to which Fleming had no valid title, the $6,000 *dollars* he had paid Fleming was the full value of the Pulaski lands, and that the lien in Fleming's deed could never be enforced against these lands,
361 and that as to the Prairie lands, my deed would convey to him, Ober, a title older and superior to the lien of the Fleming deed, &c. Such was the substance of Thompson's representations to Ober in my presence, and this seemed to satisfy him. I wrote the conveyance from Thompson to Ober for the Pulaski lands. I agreed to give Ober a quitclaim deed for the Prairie lands only. When I went to write the deed I was about to insert in it $2,000 as the consideration, when he requested me to insert a larger consideration, say $27,000, stating that he was going to St. Louis to make some negotiations on the faith of the lands, and that would make them look more valuable, &c., or something that effect. I replied that the amount inserted as the consideration was a matter of indifference to me, as I was only to give him a quitclaim deed, or something to that effect, and accordingly inserted $27,000 in the deed as the consideration. When the deed was completed, executed, and acknowledged, I handed it to Mr. Ober, and said to him I
362 wanted the $2,000, or my money, or something to that effect. He said he was a stranger in the city, and would have to get Mr. Thompson to aid him in negotiating a draft to raise the money. They went out of the office together, and Mr. Ober did not return. What occurred between them after they left the office, I do not personally know. There is one thing I do know, however, and that is, that I did not get the $2,000.

When Thompson returned to the office, which was, perhaps, the next day, he said Ober had failed to get a draft cashed, or to raise money on a draft, (I do not remember his words,) but that he had given him a time supply draft on St. Louis for $2,000, and arranged with him to

settle with me, or something to that effect. He then said that the whole affair had been ruinous to him, and appealed to me to settle with him on as liberal terms as I could possibly afford.

Ober subsequently told me that through the assistance of Thompson he had obtained the money of the bank on a draft, which he af-
363 terwards paid, and that Thompson was to hand the money to me, or something to that effect. I had no settlement with Thompson at that time. He was about starting off, as I remember it, on a trip to look after some cotton matters, and told me he would settle with me on his return. After his return, and about the 30th March, 1868, we had a partial settlement. He was indebted to the firm of English & Wilshire for legal services, on which he paid $100 and left his remaining indebtedness unsettled; and it remained so. He was indebted to me personally for taxes paid on lands, personal services, and expenses connected with the trust-deed, his cotton matters, &c. And yielding to his appeal to make my demand as moderate as possible on account of the ruin connected with his purchase, lease, &c., &c., of the Fleming lands, &c., I summed up the matter at about $1,432.00, in which was included the amount of that I paid for the Prairie lands, and crediting him with the proceeds of the draft on Thompson & Cummins, (which I did
364 not use in his cotton matter,) and some other small sums of money which I had received of his, he gave me the draft of 31st March, 1868, on Waddy Thompson & Co., for $390, written by himself, which is made Exhibit B 3 to the deposition of Morris, to close the matters between us in which I was individually concerned only.

I had a great deal of trouble about Thompson's matters, and if I had received the two thousand dollars which Ober agreed to give me to convey the Prairie lands to him, I would not have been overcompensated for all the service and trouble rendered and had in his matters, though they proved disastrous to him.

I know of nothing further that I need state in answer to the interrogatories propounded to me on the part of Mr. Ober. I have endeavored to give substantially, as I remember the facts, or have been able to recall them from documents and memoranda in my possession, my connection with the lands in controversy. If I have misstated any fact, it is the fault of memory after the lapse of years.

365 1. Answer to 1st cross-interrogatory. The contract for the sale of the Clear Lake plantation by Fleming to Thompson was agreed on in my presence, reduced to writing, and signed in my office, 11th Dec. 1866. At some time between then and the 15th January, 1867, Fleming delivered to me a package of papers, which he said was his title-papers to the lands, to be examined and deed prepared, and I examined the papers and prepared the deed, as stated in my answers to interrogatories on the part of Ober. When I had finished the deed and Fleming had signed and acknowledged it, Thompson asked me what my charge was, and I told him that I thought my services for investigating the titles, preparing the deed, &c., were worth $200. They debated the matter between themselves, and finally Thompson proposed to Fleming that if he would pay me $100, he, Thompson, would pay me $100 also. Fleming agreed to this, and before he left, and on the 18th January, 1867, he paid me the $100. The entry made in the blot-
366 ter, at the time, in my son's handwriting, is as follows:

"JAN'Y 18TH 1867.

"JOHN T. FLEMING:
'To services in writing deed and investigating titles to lands, &c $100.00
Cr. by cash ..... 100.00"

Among the papers of Fleming were some swamp-land certificates issued to himself and, I think, to others, for lands embraced in the deed to Thompson. During the time I was examining his title-papers, I sent these certificates to Mr. Miller, then the auditor of the State, to ascertain if patents could be obtained upon them, and the answer returned was, as I remember it, that the lands were not confirmed. Fleming left the certificate with me, and requested me to obtain the patents when the lands were confirmed, saying he would be in Arkansas occasionally and furnish me the money to pay the fees of the officer for issuing the patents, &c., and I promised to do so. The lands were not confirmed to the time Ober purchased the Clear Lake place, and since then I have made no inquiry about them. I left Mr. Ober to look after his titles.
367 Had the lands been confirmed during the time I had charge of the matter, it would have been but little trouble to deliver the certificates to the proper officer and obtain the patents. It was not for this promised service, but for investigating the titles and writing the deed to Thompson, that Fleming paid me the $100, as I remember it. Fleming's statement in his deposition, that I said I would charge him nothing for writing the deed, &c., on account of his kindness to my family, is new to me. My memory is greatly at fault if I said anything of the kind, and the entry in the blotter, made when the money was paid, was an incorrect entry.

2. Answer to 2d cross-interrogatory. To answer this question would impose on me an uncompensated labor, which I respectfully submit should be performed by a master. If I had all the papers before me which I had when I prepared the deed from Fleming to Thompson, I might, perhaps, on re-examining them and the public records, &c., answer the question with some degree of satisfaction; but I am
368 not disposed to take upon myself this labor in merely giving my deposition as a witness. After I had examined Fleming's papers, I informed him and Thompson both of the defect in the quantity of the lands, the character of the title-papers then submitted to me, &c., and the deed was prepared and signed by Fleming, on an agreement that it was to be taken to Tennessee, filled out and perfected, &c., as stated in my answers to interrogatories on the part of Mr. Ober.

3. Answer to 3d cross-interrogatory. I have no information that would enable me to state whether the lands to which Fleming appeared to have no legal title were improved or unimproved, or their relative value as compared with other portions of the Clear Lake plantation. I have never investigated or inquired into that matter. In the contract of sale Fleming represented that there were 4,000 acres in the plantation, and undertook to convey that number of acres, and the lands were averaged in the trade at $15 per acre, making $60,000.00; but my
369 knowledge of the plantation is not sufficiently accurate to enable me to distinguish by numbers the improved from unimproved lands.

4. Answer to 4th cross-interrogatory. If I knew of the transfer by Fleming to Gallagher of the notes given by Thompson to Fleming for the Clear Lake Plantation sooner than the 29th of January, 1868, or about that time, I have no recollection of it. On that day, at the request of Thompson, I wrote a notice to Gallagher for Thompson that the consideration of the notes had failed, and that he would not pay them, which was sent to Morris, served by copy, and the original returned to me, and it is only from finding and looking at this paper that I am enabled to state that I knew of this transfer as early as the 29th of January, 1868. A copy of this paper is made Exhibit A to the deposition of

Gallagher. Thompson was in my office, I think, when it was written, at least he was in Little Rock. The substance of Thompson's representations to me about this transfer was that Fleming had gone to
370 New Orleans, soon after he sold him the lands, and before he, Thompson, knew of the failure of Fleming to comply with his promises about filling up the blank left in the deed with the additional lands, &c., &c., and traded the notes to Gallagher (who was a shaver, he said) for less than half their face value; that Fleming had afterwards vested his means in lands conveyed to his wife, and gone or attempted to go into bankruptcy, and that Gallagher could defeat his bankruptcy, and subject the lands conveyed to his wife to the payment of what he had given him for the notes. Thompson also represented to me that he had advanced to Fleming, during the cropping season of 1867, and after he had purchased the lands of him, some twenty-five thousand dollars, on faith of his shipping cotton to him from Red River plantations, which Fleming was cultivating or concerned in cultivating, and that Fleming had failed to ship him the cotton, &c., and on that account he wanted Gallagher to defeat his bankruptcy and force him to take
371 up the notes. I do not undertake to state these matters as facts, but simply as the substance of representations made to me by Thompson at one time and another in relation to the transfer of the notes by Fleming to Gallagher, as I remember them.

5. Answer to 5th cross-interrogatory. I was at Brownsville on the 19th August, 1866, when the Prairie lands were sold under the Embree judgment, and have above stated what occurred.

6. Answer to 6th cross-interrogatory. I have above stated, in my answers to interrogatories-in-chief, to the best of my recollection, the names of the persons with whom I conversed about the sale of the lands by the sheriff, the substance of what I said to them, the motives that influenced my conduct, and what I did before, at, and after the sale.

7. Answer to 7th cross-interrogatory. The first thing I did, as I remember it, after seeing the sheriff's advertisement of the lands for sale, in the Des Arc paper, as stated on my examination-in-chief,
372 was to go to the clerk's office and examine the judgment in favor of Embree against Fleming, to ascertain if it was regular, its date, amount, &c. I do not remember that I made any computation of interest; my impression is that the sheriff furnished me, from the execution, the full amount of the judgment, including interest and costs. And I made the arrangement with Col. Gantt to bid the amount of the execution on the lands, as stated in my examination-in-chief, to which arrangement the sheriff consented, as also stated, &c., and the arrangement was carried out in the manner stated in my examination-in-chief, &c.

8. Answer to 8th cross-interrogatory. The sheriff had, as I remember it, a large amount of lands, &c., advertised for sale under executions; there were a good many persons present, having the appearance of the people of the community, with some lawyers attending the court interspersed, but I cannot state that a larger number of persons were
373 present than were usually present on the first day of the Prairie circuit court when held at Brownsville. When the Fleming lands were put up for sale there were several persons present who knew that I had agreed to bid the amount of the Embree execution for the lands, but I have no recollection that I, or the sheriff, made any public announcement of the fact. If it had been announced to the people there assembled that I had agreed, or intended, to bid the amount of the execution for the lands, and they had been requested as a favor to Waddy

Thompson not to compete with me in bidding, I doubt if the announcement would have had that effect, for Thompson was only known, as far as known to the people, as a cotton speculator during the war, and particularly during the Federal military occupation of the country, and my impression is that he was not popular. If the request had been made as a favor to Fleming, I think it would have had but little effect, for he
374 was known, not only as a cotton speculator during the Federal military occupation of the country, but as a trimmer between the two sides, and my impression is that he was not popular. If it had been announced that I desired to purchase the lands at the amount of the execution for my own personal benefit, there were perhaps friends of mine present who might have refrained from competing with me in bidding, and there were others present who perhaps would not have been influenced by such an announcement. I think the fact that I intended to bid the amount of the execution for the lands, and had so agreed with Col. Gantt, was known only to the few persons to whom I had mentioned it in private conversation. I have some recollection that during the time the sheriff was crying the lands, some one enquired whose bid he was crying, and he responded that it was my bid. This is the only announcement that I remember in connection with my name during the sale.

9. Answer to 9th cross-interrogatory. I bid the amount of the
375 execution for the lands, because I had agreed with Col. Gantt to do so, as stated in my examination-in-chief, and I had ascertained the amount. Why no one of all the persons assembled bid or offered to bid more for the lands than I bid, I can only answer conjecturally, as I have done in my examination-in-chief. A great many lands were sold on nominal or low bids, on that day, and the general talk was that money was scarce among the people of the community, and but little disposition manifested to compete in bidding for lands. I cannot state positively whether the Fleming lands were sold in a lump or in separate tracts or parcels. The sheriff went over the lands, and called them out by tracts, but whether I counted the tracts, and bid a sum for each tract, so that the aggregate of the sums bid was the amount of the execution, as I have usually done at such sales, or bid the amount of the execution for the lands in a body, I do not remember. The sheriff's deed states that the lands were "offered by separate tracts," and bid off by me "for the aggregate sum," &c.

376 10. Answer to 10th cross-interrogatory. After my return from Brownsville, I wrote to Waddy Thompson, and the paper following and made part of this interrogatory is a copy of the letter. The original letter is made Exhibit P to the deposition of Morris, and on my examination-in-chief I have stated all that I deem it necessary to say about this letter.

11. Answer to 11th cross-interrogatory. I have no recollection that I was employed by Waddy Thompson to do any service for him as an attorney prior to the 11th of December, 1866, when he and Fleming asked me to reduce to writing their contract for the sale and purchase of the Clear Lake plantation. Between then and the 15th January, 1867, I examined Fleming's title-papers, and wrote the deed from Fleming to Thompson, at the instance of both of them, as stated on my examination-in-chief. In the mean time, and about the 26th December, 1866, I went with Thompson, at his request, to the residence of Newton J. Smith, and wrote the lease from Thompson to Morris, Smith &
377 Morris, for the Clear Lake lands, and the deed of trust from them to Thompson to secure the rent, advances, &c., and in the deed

of trust I was named, by mutual consent of parties, as trustee. During the time Thompson was here, on that visit, he made an arrangement with me to make advances on cotton for him, and to make advances to our planters during the coming cropping season on mortgages and on agreements to ship their cotton to his house, &c. At the time I purchased or bid off the Prairie lands under the Embree execution, in August, 1867, I was trustee in said deed of trust, and was authorized to arrange with our planters for him to make advances to them, &c., but I had no business on hand as his attorney at that time that I remember. I am still attorney for Thompson in suits pending in the courts of this State, in which he is a party.

12th. Answer to 12th cross-interrogatory. In addition to my services for Thompson in writing the sale-contract between him and Flem-
378 ing, investigating titles to the lands, writing the deed, going to the country to write the lease and deed of trust, attending to his cotton matters, &c., I procured military order to place the Clear Lake and other places, trust-property, &c., in the hands of persons named for that purpose; spent some ten days in going to the McNeely place, Smith place, Clear Lake place, and James Morris place, to sell the wreck of the property embraced in the deed of trust, defending attachment suits brought by Badgett and others against Morris et al. and levied on the trust-property, and defending and prosecuting replevin suits for property sold at the trust-sale and not and bid off for Thompson, &c., all of which were before the date of my conveyance to Ober; and since then have prosecuted and defended a number of suits for Thompson. I procured Wilkerson to pay the taxes of 1866 on the Prairie lands; paid myself the taxes for 1867 on some of the lands purchased of Fleming, and some of the wild lands embraced in the trust-deed. He rented
379 the Fleming lands himself, for the year 1867, to Morris, Smith & Morris. My efforts to collect rents were almost ineffectual. What little cotton was procured from the Clear Lake place for rent, advances, &c., was gathered and shipped, under the supervision of the military appointees, &c. I have no account or memorandum of the drafts drawn in the cotton transactions, other than as stated on my examination-in-chief. I left the bank and Thompson to keep an account of drafts, &c.

13. Answer to 13th cross-interrogatory. After the sale of the Clear Lake lands by Fleming to Thompson, I found out in some way, perhaps by the sheriff's advertisement, that Fleming had not paid the taxes on the Prairie lands for 1866. I procured Mr. Wilkerson to pay them, obtained the collector's receipt and sent it to Thompson, with a note or memorandum written on the back of it, which is made Exhibit C to deposition of Morris, and to all of which I have fully referred in my examination-in-chief. I do not remember that I wrote Thompson about it, otherwise than by the note or memorandum made on the back of the collector's receipt.

380 14. Answer to 14th cross-interrogatory. The Clear Lake place was rented by Thompson to Morris, Smith & Morris, Dec. 26th, 1866, for five years from 1st January, 1867, for $50,000; $15,000 to be paid 1st January, 1868; $15,000 1st January, 1869; $10,000 1st January, 1870, and $10,000 1st January, 1871, and they gave their notes or writings-obligatory for the money, with one Nathan H. Morris, surety. They also executed a trust-deed to Thompson, in which I was named as trustee upon the lease, the crops to be made on the place, and two other places, (McNeely's and James Morris' places, which they had rented for the year 1867,) and their horses, mules, cattle, hogs, farming implements,

some wild lands, &c. This deed of trust was to secure not only rents but advances to be made them by Thompson & Co.

15. Answer to 15th cross-interrogatory. On the Clear Lake place there was a comfortable farm dwelling, negro cabins, out-houses, gin, &c., and some five or six hundred acres of cleared land, (so represented,)
381 and other lands that had been deadened or partially cleared. But how much of the cleared lands were in Prairie, and how much in Pulaski, I do not know. Mr. Ober has made very considerable improvements on the place since he purchased it in the way of new fencing, gin-house, and other buildings, &c. Morris, Smith & Morris had a number of hands on the place in August, 1867, but I do not now remember the number. They failed to get or to keep hands enough to cultivate the whole of the cleared land in that year. This was one cause of their failure.

16. Answer to 16th cross-interrogatory. I have stated in my examination-in-chief what occurred between Mr. Bowcock and myself about the use of so much of the Clear Lake place as was then in Prairie County, and to which I then held the sheriff's title, on the 10th February, 1868, for the year 1868. Bocock and Thompson were then, or had been, as I understood, negotiating for the cultivation of the place as partners for the year 1868. When Thompson and myself conveyed the lands
382 to Ober, 29th February, 1868, it was understood that Thompson and Bowcock were to have the use of them, and pay the taxes for the year 1868, and that Ober was not to have possession until the first of January, 1869. I heard nothing more of the matter of rent until Mr. Morris came here, after the crop of 1868 was gathered, and was trying to settle Thompson's partnership matters with Bowcock. Morris claimed rent of Bowcock in the settlement, and he refused to allow it. They both talked to me about it. Bowcock stated, as I remember it, that Thompson had sent him partnership articles, in which rent was to be allowed in favor of Thompson, and he had refused to sign them. That he had sent Thompson a proposition to put his services against rent, and that Thompson had not signed that, and that the matter stood open. Bowcock also reminded me of what I had told him about the rent of the Prairie lands—that he could have the use of them for repairs and taxes, &c. I advised Morris to yield the claim for rent rather than have litigation with Bowcock, and my impression is
383 that, when they finally settled, Morris did yield the claim for rent, though I was not present.

17. Answer to 17th cross-interrogatory. I never received or contracted to receive any rents for the Clear Lake lands. When the sheriff's deed was made to me for the Prairie lands, the whole place was under lease to Morris, Smith & Morris, as before stated. After they were broken up and quit the place, and about the 10th February, 1868, I told Bowcock that he could have the use of the Prairie lands for the year 1868 for repairs, taxes, &c., as above stated. Shortly afterward the sale and conveyance were made to Ober, and I regarded my connection with lands as terminated.

18. Answer to 18th cross-interrogatory. I have fully stated in previous answers all the claim I ever asserted to said lands, and all the instances in which I exercised acts of ownership over the lands.

19. Answer to 19th cross-interrogatory. I have no recollection of knowing that Ober was at the Clear Lake place in any of the
384 months mentioned in this interrogatory. Nor have I any recollection of his being in Little Rock in any of those months except the

month of February, 1868, when and about the time he purchased the Clear Lake place. I have no recollection of Thompson being at the Clear Lake place or in Little Rock in October or Nov., 1867. My recollection is that he was here and at the Clear Lake place in December, 1867, and in February, 1868, but how often I do not remember. Possibly he may have been at the Lake and in Little Rock earlier than in December, 1867, but, if so, I do not remember it.

20. Answer to 20th cross-interrogatory. I have no recollection that I ever had any communication or conversation with Thompson or Ober about the sale of the Clear Lake lands to Ober until we were together in the Anthony House, on the night before the day the conveyances were written. If I had, I have forgotten it. What was said at that interview, and between Ober and myself, when he walked with me from the room, and what was said when the parties met next day in
385 my office to make the conveyances, and what followed, I have stated substantially on my examination-in-chief as well as I can recall the facts.

21. Answer to 21st cross-interrogatory. The notice from Thompson to Gallagher, referred to in this interrogatory, was written by myself, at the request of Thompson, as stated in answer to another question above. Of the letter from Thompson to Gallagher, dated Little Rock, 4 Feb., 1868, and made Exhibit B to Gallagher's deposition, I remember nothing. I have no recollection of knowing that Thompson wrote such a letter. It may or may not have been written in my office. I have no recollection of Ober being in Little Rock or on the Clear Lake place at the date of the notice, (29th Jan'y, 1868,) or at the date of said letter.

22. Answer to 22d cross-interrogatory. Thompson and Ober were both in Little Rock on the 29th of February, 1868, and Thompson was present when I conveyed the Prairie lands of said Clear Lake place to Ober, as I have before stated.

386 Answer to 23d cross-interrogatory. I did not enquire or seek to learn of Thompson or Ober, at the time the conveyances were made, the particulars of their trade. I understood from Ober that he was seeking to save what he could of the large debt that Thompson owed him in purchasing the Clear Lake place. Both of them have since then talked to me in a general way about the matter, differing in their version of the matter; but, feeling no particular interest in their statements, I did not charge my memory with them, and would not undertake to repeat what they said.

24. Answer to 24th cross-interrogatory. I at no time received any draft from Ober, or the proceeds of any draft, that I know of. On the 5th December, 1867, I procured to be cashed, on my endorsement, at a discount of $250, by the Merchants' National Bank, Little Rock, the draft drawn by Waddy Thompson on Thompson & Cummins, as stated in my examination-in-chief, and a copy of the draft is there given. I remember of receiving the proceeds of no other draft from Thompson during either of the months named in this interrogatory.

387 25. Answer to 25th cross-interrogatory. The proceeds of the above draft were audited to Thompson on the final settlement made between us of matters in which I was individually interested only about the 30th March, 1868, and in that settlement he was debited with the amount I paid for the Prairie lands, &c., as fully and particularly stated in my examination-in-chief.

26. Answer to 26th cross-interrogatory. In my examination-in-chief I have stated all that I remember about the draft on Thompson & Cum-

mins, discounted on my endorsement by the Merchants' National Bank. I did not use the proceeds of that draft in purchasing cotton, as before stated.

27. Answer to 27th cross-interrogatory. At some time in the fall of 1867, the date not remembered, I handed to Col. R. Gantt, in Little Rock, the amount of money I bid for the Prairie lands at the execution sale.

28. Answer to 28th cross-interrogatory. I have no recollection of knowing from Thompson or Ober, of Ober paying Thompson $2,000,
388 or any such amount, for farming implements, on said Clear Lake place, and in consideration of getting possession of the place in February, 1868. Ober was not to get possession of the place until first of January, 1869.

29. Answer to 29th cross-interrogatory. I had in my possession the lease-notes of Morris, Smith & Morris for $50,000, and their receipts for advances made to them by Thompson, partly through me, for some seventeen thousand dollars.

30. Answer to 30th cross-interrogatory. I have no recollection of receiving any such telegram from Ober, from New York. If I received any such, I have not preserved it, and have forgotten it.

31. Answer to 31st cross-interrogatory. I do not remember to have had any communication or correspondence with Ober about the solvency of Thompson, or the failure of the securities in my hands, until Ober came here to purchase the Clear Lake place in February, 1868. My impression is that Ober learned of Thompson about the failure of the Morris, Smith & Morris securities, &c. If I informed him of it before he
389 came here, I do not remember it, though it is possible I may have done so.

32. Answer to 32d cross interrogatory. I think I have heard Ober say at some time, that he had been to New Orleans to see Thompson about what he owed him, before he came here to purchase the Clear Lake lands, but I paid but little attention to the matter, and have no distinct recollection about it. I do not remember of hearing Thompson say anything about Ober being in New Orleans.

33. Answer to 33d cross-interrogatory. I have no recollection of learning anything of the kind from Thompson or Ober.

34. Answer to 34th cross-interrogatory. I have endeavored to state fully and impartially the substance of all the material facts within my knowledge about the matters in controversy in this suit. I know of no other material matter that I could state to the benefit of complainant.

E. H. ENGLISH.

Sworn to and subscribed before me April 3d, 1872.

B. D. ENGLISH,
U. S. Commissioner, Eastern District of Arkansas.

390 UNITED STATES OF AMERICA,
Eastern District of Arkansas :

I, Ralph L. Goodrich, clerk of the circuit court of the United States for the eastern district of Arkansas, in the 8th circuit, do hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of their originals, on file and remaining of record in my office, in the case of Gallagher v. Thompson & Ober.

In witness whereof I have hereunto set my hand and the seal of said court this 10th day of August, in the year of our Lord one thousand

eight hundred and seventy-four, and of the Independence of the United States of America the ninety-ninth.

[SEAL.]

Attest: RALPH L. GOODRICH, *Clerk.*

(Indorsement on cover:) No. 251. Robert H. Ober, appellant, vs. Charles Gallagher. E. Arkansas C. C. U. S. Filed 18th September, 1874.

Supreme Court of the United States.

ROBERT H. OBER, Appellant,
vs.
CHARLES GALLAGHER, Appellee.
No. 251.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANT.

The appellee, as assignee of John T. Fleming, sued appellant and Waddy Thompson in the court below to enforce a vendor's lien on certain lands which were sold by Fleming to Thompson, and afterwards purchased by Ober—the lands situated in the counties of Prairie and Pulaski. In the deed from Fleming and wife to Thompson a lien is retained for the payment of the ten promissory notes from Thompson. Ober is sued as a citizen of Arkansas and Thompson as a citizen of Tennessee.

One of these ten notes appellee owned, and recovered judgment on it in New Orleans on 7th June, 1869, and this judgment is Exhibit B to the complaint. Previous to the sale by Fleming to Thompson, nearly a year, a judgment was recovered by Embree against Fleming, and levied on most of these lands, (those in Prairie county,) and they were sold on 19th day of August, 1867, and were bought in by E. H. English. It is charged in the complaint (*Trans.*, 4) that owing to declarations of English at the sale bidding was stifled and the lands went off at merely nominal sums, and English was acting as agent of Thompson. Fraud and all sorts of bad acts are then alleged

against English and Thompson, and gravely hinted at as against Fleming. (*Trans.*, 4 and 5.) It is averred that Ober bought knowing all this fraud, and that he was duly advised of the whole facts by Judge English. (*Trans.*, p. 5.) The complaint declares Ober's purchase a sham, and a fraud also, in the phraseology that has adorned pleadings of that character for many years. Fleming is alleged to to be insolvent, and that he took the benefit of the bankrupt act.

The following interrogatories are propounded to the defendant:

"1. State under what circumstances the said conveyances from said Thompson and English were made to said Ober.

"2. State whether, during the time of the occurrences herein named, the said English was not the legal adviser and attorney of both Thompson and Ober, and also of said Fleming.

"3. State severally whether, before the said conveyances were made, you were not informed by said English that he had made the said purchase at said execution sale, and that he had purchased for the use and benefit of said Thompson and as his friend and attorney, and that he had so publicly announced at the time of such sale.

"4. State, without any mental reservation, how much the said Ober agreed to pay said Thompson in the said purchase, how much he agreed to pay to said English, how much he has paid said English, how much he has paid said Thompson, and when and how such payments were made, and whether Thompson did not previously owe said Ober, and what part of the debt was extinguished by said purchase.

"5. State, without any evasion, how much of the purchase money for said lands, as agreed upon between said Thompson, Ober, and English, was unpaid at the time of the making said conveyances to said Ober, and how the debt for the same was evidenced; whether by notes, bills, or otherwise, the dates and amounts of the same severally, and how the said debt was secured.

"6. Set forth the entire agreements made between the said Thompson, English, and Ober, with all the details of the same in every particular, impartially and fully, and state what part of the same was in writing and what part

was not, and produce in court all the writings pertaining thereto.

"7. State who is in possession of the said lands, and from whom, and when, and how the said possession was obtained.

"8. State whether the said English ever was in the actual possession of any of said lands, and if so, of what part and how the said possession was evidenced.

"9. State whether said Thompson did not owe said Ober at the time that said purchase was agreed on, and how much, when due, how evidenced, and how far the said indebtedness entered into said purchase.

"10. State how much was paid said English, and by whom, and how the same was paid."

The complaint asks for a decree for the amount of the judgment in New Orleans, a lien declared on the lands for the same, the lands sold, &c., &c.

To the complaint Ober and Thompson demurred, but the court overruled the demurrer, and the questions arising on it will be first presented here.

The following are the grounds of the demurrer, (*Trans.*, pp. 27 and 28:)

"1st. Said bill shows that said Thompson is a non-resident of said district, and not within the jurisdiction of this court.

"2d. Said complainant, as the assignee of the note named in said bill, did not take any lien, nor has he any under and by virtue of the assignment of said note.

"3d. Said bill fails to show that John T. Fleming, the original holder and payee of said note, could have brought suit thereon in this court.

"4th. Said bill fails to show that complainant has exhausted his remedies at law to collect the debt named in said bill.

"5th. The judgment exhibited with said bill rendered in the State of Louisiana merged the note named in the bill, and this court has no jurisdiction to enforce such judgment as a lien against the lands described in the bill, or to enforce it all until a judgment is rendered on the same in this court at law.

"6th. Said complainant having elected to sue said Thompson at law, he must abide such election, or show

that he has used all remedy under such suit, but to no purpose, which said bill does not show."

Upon the first point in the demurrer, *Conkling's Treatise, page* 143, (4th edition,) says: "When there is a plurality of plaintiffs or of defendants, *each one* must possess the requisite character in this respect to sue and be sued." The bill, too, must expressly aver this citizenship. *Conkling*, 343–9; *Story's Eq. Pls.*, (by Redfield,) §§ 492, 721. But here the bill shows directly that Thompson is a non-resident. And it is submitted that the act of February 28, 1839, ch. 37, § 1, (5 Stat. at Large, 321,) does not modify this rule any further than to permit the suit to progress as against the defendant residing in Arkansas—Ober, for instance—and to be dismissed as to Thompson. 1 *Wheaton*, 91; 1 *Paine, C. C.*, 410; 3 *Cranch*, 267.

Upon the second point: The complainant holds the note here merely as an ordinary assignee, and if this suit is to enforce a lien by virtue of the assignment, it is respectfully insisted the lien did not pass to him under the assignment.

In 1 *Leading Cases in Equity*, (notes by Hare & Wallam,) *top page* 367, (3 Am. ed.,) after a review of the authorities on this point, it is said: "Elsewhere, however, the decisions have been different, and the weight of authority is decidedly against this lien accompanying a transfer of the debt." See, too, *Campbell's Appeal*, 6 *Am. Law Register*, 751–65.

2 *Washburn Real Property*, *p.* 92, *section* 18, (3 edition,) says: "It has been held in Kentucky, Indiana, and Alabama, that the assignment of a vendor's claim for purchase money carries with it the vendor's lien, whether express or implied." And he cites some half dozen cases in note 3. Then, he proceeds: "But the prevailing opinion in other States seems to be that such a lien is a personal one, and does not pass by the assignment of the claim," and cites some sixteen cases; and among them, *Shall* v. *Biscoe*, 18 *Ark.*, 142; *In re Samuel W. Brooks*, 2 *B'k Reg.*, 149.

We think, therefore, upon a fair review of the cases, Gallagher shows no right here to this lien. To have got the benefit of this lien Fleming himself should have been made a party, and Gallagher asked to be subrogated to all his (F's) rights here; or in other words, the assignment to carry the lien might have been thus perfected. 2 *Story Eq. Juris.*, *p.* 1039–40–40*b.*, 57; *Story Eq. Pls.*, 118–34–53–58.

In perfecting the assignment in this way the court would give Gallagher the benefit of any securities out of which the debt was to be paid, or if the lien was still in Fleming the court would hold him a trustee with this for the benefit of Gallagher. The maker of the note, the indorser, and all being parties, the whole matter would be resolved into a trust, which equity would at once enforce. 2 *Story Eq. Jur.*, § 1040; 4 *Rand.*, (*Va.*,) 447; 1 *Eq. Cas. Ab.*, 93; 6 *B. Mon.*, (*Ky.*,) 393; 7 *Cranch*, 94; 1 *Johns. Ch.*, 119; 10 *Johns.*, 65; 2 *Johns. Ch.*, 418; 18 *Johns.*, 402; 1 *Paige*, 329; 10 *Ves.*, 411; 11 *Ib.*, 13. *This position* is greatly strengthened when we consider that here there are other outstanding notes which are liens as much as this one, and equity taking the case for this one purpose as to Gallagher's note would hold it for all purposes. 2 *Story*, *sec.* 1250; 11 *Ohio*, (*Stanton*,) 21; 5 *Cranch*, 322; 2 *Spence Eq. Juris.*, 850–2; 12 *Wheaton*, 594.

But to do this, Gallagher would be compelled to pay off the Embree lien, which he does not contest. This lien is prior to his in any event, and must be met, and Gallagher makes no offer to discharge it.

Upon the third point: This is a well-settled proposition, and needs no discussion. *Shelton* v. *Sill*, 8 *How.*, (*U. S.*,) 441.

The amendment to the bill does not remove this objection. That amendment is "*by assignment of said Fleming, who is a citizen of the State of Tennessee.*" The bill was filed February 3, 1870. We take it that the law reaches back

to the time of the assignment at least, if not indeed to the making of the note. What we hold is, that if the bill does not show that Fleming, when he assigned the note, could have sued in this court, Gallagher, his assignee, cannot. 8 *How. Sup.*, *Conkling*, 109, 133. So that the amendment that Fleming is, (*i. e.*, when the bill was filed or the amendment made, was) a citizen of Tennessee, will not, we think, cover this defect. 4 *Cranch*, 46; 16 *Peters*, 315; 2 *How.*, 241; 13 *How.*, 183; 8 *Wall.*, 393.

Upon the fourth point: In this case, as Gallagher had his judgment, he could have sued in the court below and reduced it to judgment, and issued his execution on it; and having this remedy, the court below having its equity jurisdiction solely from the acts of Congress, (and what is not conferred cannot be exercised,) most clearly Gallagher cannot resort to this course. *Livingston* v. *Van Ingen*, 1 *Paine*, 45; *Loman* v. *Clarke*, 2 *McLean*, 568; *Toby* v. *County of Bristol*, 3 *Story*, 800; *Bennett* v. *Butterworth*, 11 *How.*, 669; *Jones* v. *McMasters*, 20 *How.*, 9.

The bill, of course, must show jurisdiction, the presumption being the party has a remedy otherwise. Here he shows he has his judgment against Thompson; then he must show he has followed his legal remedies throughout. This he in nowise avers. That it is incumbent on him to do so, there can be no doubt. 4 *Dallas*, 5; 1 *Peters*, 232; 3 *Peters*, 210; 15 *How.*, 299; 2 *Black*, 245; 2 *Curtis*, 592; *Baldwin C. C.*, 394; 5 *McLean*, 337; *Mex* v. *Authury*, 6 *Eng.*, (11 *Ark.*,) 411; *Wiggins* v. *Armstrong*, 2 *Johns Ch.*, 144.

He must have reduced his judgment to judgment in the Circuit Court, and had his execution returned *nulla bona*, &c. Until then "he had no concern, as was said in *Wiggins* v. *Armstrong*, Sup.," with T.'s frauds. See *Apperson* v. *Ford*, 23 *Ark.*, 746 *et seq.*, Judge Fairchild's opinion. This is the established doctrine in this country and Eng-

land. *Story Eq. Pls.*, § 257*a et seq.;* 1 *Clarke*, (*Iowa*,) 98; *Ib.*, 148.

In *Carter* v. *Bennett*, 6 *Florida*, 214, the court held thus: "A judgment recovered in the State of Georgia, as to matters of evidence, is entitled to full faith and credit in this State, but the same faith and credit are not due to subsequent acts under it; and until said judgment has been prosecuted in a court of this State, judgment recovered, and execution issued and pursued to every available extent, the plaintiff is but a creditor at large." Then, if complainant is but a creditor at large, he has nothing to do with the fraud of T. & Ober. *Scott* v. *McFarland*, 34 *Miss.*, (5 *George*,) 363.

Gallagher, according to our view, has no remedy under the assignment of the note. But if he is not asking for that, but relief under his judgment, then he can sue in the court below to get judgment, and run his execution, and till he does that he has no relief in this proceeding. He might, pending his suit to get his judgment, have equity to interpose and prevent Thompson from disposing of his property to defraud him, but nothing more. *Bullitt* v. *Taylor*, 34 *Miss.*, (5 *George*,) 708 But this proposition will be more fully considered under the fifth and sixth causes following. Upon the fifth point: The judgment merged the note named in the bill, and the court below cannot enforce that judgment as a lien, nor at all, until it becomes a judgment there.

Now it is certainly true that this note is lost in the judgment; and although complainant may seek to have some relief as assignee of the vendor's lien, this suit cannot be maintained, as this note and all its incidents are sunk in this judgment. *Green* v. *Sarmiento*, *Peters C. C.*, 74; 3 *W. C. C.*, 17; *Postlewaite* v. *Howe*, 3 *Clarke*, (*Iowa*,) 365; *Besby* v. *Palmer*, 1 *Hill*, (*N. J.*,) 482; *Jones* v. *Jamison*, 15 *La. An.*, 35; *Kittredge* v. *Stephens*, 16 *California*, 381; *Temple* v. *Scott*, 3 *Minnesota*, 419, *et seq.; Freeman Judge*, 215–221.

This being true, Gallagher is forced to stand on his Louisiana judgment. That judgment is no lien on T's lands or estate in Arkansas; it stands simply proved as against all inquiry as to the merits of the subject-matter of debt or no debt. *Story Conf. L.*, 584–603, 609 *a*; *Brightley's Dig.*, *p.* 499, *sec.* 188; 6 *Florida Sup.*; 1 *Robinson Practice*, 194–228. This judgment has no operative force as a decree *in rem* beyond the place where it was rendered. 16 *Peters*, 26; 1 *McL.*, 167; 6 *Peters*, 389. Then it is no more or less than an evidence of indebtedness upon which an action of debt could be maintained in the court below or in our State courts. There is no such thing as equity in the Circuit Court enforcing a judgment rendered *in personam* in another State. *Brightley's Dig.*, *p.* 497–9, actions on judgment. The case quoted above (34 *Miss.*, 708) was upon a judgment rendered in the United States court in the same State, and where the judgment was a lien. So, too, was *Bean* v. *Smith et al.*, 2 *Mason C. C.*, 252, a case where the parties, land, judgment, and all were in the same State. *Shields* v. *Thomas*, 18 *How.*, 253, was a case to enforce a decree rendered in a State court, (Kentucky,) filed in District Court of Iowa; but the decree in Kentucky was upon parties and property *in personam* and *in rem*. See pp. 258–9. Here this judgment, it is true, is good against T., but is not as against Ober, nor does it bind T.'s property in Arkansas. It must first go to judgment in that State. We apprehend there is little or no doubt of this.

This is true, beyond all question, when we consider how tenderly the Circuit Court of the United States always deals with matters once in the State courts, even the State in which the United States court is held. It must, then, be a clear case to require the Circuit Court to give aid. (*Conkling*, 272; 2 *Story*, 598; 3 *Sumner*, 425–9.)

The United States courts always require the strongest kind of showing before they will take jurisdiction of such cases; and when they do act, it is because of some supe-

rior lien, which does not and cannot exist in this case. 2 *Sumner*, 589; 20 *How.*, 591; *Brightley's Dig.*, (creditor's bill,) *p.* 291.

The sixth proposition is the legal result of the positions already argued, and we think there is no good showing to take the case out of this rule.

Ober is no party to this judgment, and this judgment does not bind the land of T., and could not at all obstruct his disposing of it; and certainly upon it no inquiry can be instituted as to the fraud of Ober in the Circuit Court.

The demurrer is relied upon with the utmost confidence. But the case, upon the answer of Ober and the testimony, is, without the shadow of a doubt, in favor of appellant.

The answer of Ober (*Trans.*, 29–36) to the general charges of the bill and to the separate interrogatories is full and direct. Called upon to make discovery, Ober brought himself within the most rigid rule of practice that required him to speak "*fairly, frankly, ingenuously, and fully.*" 24 *Ark.*, 410; *Mitford Pls.*, 10, *note* 1, *et seq*; *Wigram Discov.*, 54, *note* 4; *Ib.*, 67.

Besides the force and effect of Ober's answer, under the rule of practice, it was agreed of record that it should stand as his deposition in the case in order not to burden the record unnecessarily. (*Trans.*, p. 43.) Ober's responses to the interrogatories are here given, to show that he evaded nothing whatever that was asked him. (*Trans.*, pp. 33, 36.

"For answer to the first (1st) interrogatory propounded by complainant, this defendant says that at the date of his purchase from the said English, the said Waddy Thompson was indebted to him, on account of money loaned and advanced to him for nearly or about one year previous to that time, in a sum amounting quite or nearly to thirty thousand dollars, ($30,000,) which sum the said Thompson had repeatedly assured this defendant was more than secured by claims in his favor against or other parties, in

the hands of said English to be collected, and that said claims amounted to at least fifty thousand dollars, ($50,000;) and to satisfy himself this defendant, then being in the city of New York, wrote to the said English requesting him to inform him of such claims and whether they were good, and to hold the same for his (defendant's) use; and the said English replied that he held such claims, and they were available and more than sufficient to secure this defendant, and that he would hold the same to apply to his debt against said Thompson; and upon this assurance this defendant rested satisfied until just a short time before he made such purchase. In trying to settle with said Thompson he failed, and went to the city of Memphis to meet said Thompson, and there for the first time learned that said Thompson was insolvent and that he would likely lose his debt, and also that said lands were not his, but that they belonged to said English, the said Thompson having frequently before that time offered to sell said lands to defendant to pay his said indebtedness, and representing to defendant all the time until they met at Memphis that the lands were his and he could make title to them. Finding at Memphis defendant could do nothing towards settling his claim against Thompson, he concluded to visit said English and ascertain how much, if anything, he could realize out of the claims he held for collection in favor of Thompson, and much to his surprise when he met said English he learned from him that the claims which before that time he thought were worth $50,000 would not then bring one cent to pay his debt, but were utterly worthless.

"This defendant then asked said English if said Thompson owned the lands aforesaid, and said English replied that he did not own the lands in Prairie county, but that he, said English, owned them, and he considered his title good, and he was under no kind of obligation to let Thompson have them, and that he had declined to do so, and would still refuse to let him have them; thereupon this defendant asked said English if he would not under all the circumstances sell him the lands aforesaid; and to this said English replied that as this defendant had relied upon his statements as to the value of claims he held belonging to said Thompson, and was now to lose everything if he did not get the lands, he would sell them to him if he would pay him, said English, what he had paid for them, and other sums by way of fees that Thompson owed him,

which together amounted to about two thousand dollars, ($2,000,) and this defendant at once agreed to this and negotiated a bill to the bank at Little Rock through said Thompson for that sum, ($2,000,) as this defendant was a stranger at Little Rock, and after he returned to New York he paid back to said Thompson that sum, $2,000.

"On paying that amount to said English he made the deed aforesaid (Exhibit D to the bill) to this defendant, and he had the consideration of $27,000 inserted therein, because he desired to raise some money upon the lands, and he believed, as he does now, that sum was not too much for them, and he had lost fully that much by the said Thompson in his transactions with him; and he avers, but for the fact of said English representing to him that his debt against Thompson was secure, he never could have got said lands from him for anything less than their full value in money; but he made such purchase for no benefit of said Thompson, but for his own, and with no view of shielding or protecting said Thompson, but in good faith, and, as he conceives, without fraud in law or in fact.

"And on making such purchase of said English he then bought of said Thompson the lands in Pulaski county, as appears by deed of date February 27th, 1868, Exhibit E to the bill, and he allowed said Thompson a credit of $5,000 for them, and that was full value therefore; and said Thompson then had the undisputed right to sell said lands, as he had paid up his first note to said Fleming for $6,000, due 1st March, 1867, the same having been paid on the 19th day of January, 1867, as will appear by said note, indorsed by said Fleming, herewith filed and marked Exhibit X 2, and made part thereof, and there being no lien on the lands in Prairie county on account of the sale to said English, this note, paid as aforesaid, was as much, if not more, than the said lands in Pulaski county were bound for, especially in view of the failure in both title and quality, hereinbefore specially pleaded; and so defendant avers his said purchases from English and Thompson were made in good faith and for value; and by virtue thereof his title to said lands is complete in law and equity, and he pleads the same in bar of any recovery by complainant herein.

"To the second (2d) interrogatory propounded he answers that, from information which this defendant believes true, said English was the attorney of said Thompson, as hereinbefore stated. Said English was not the legal adviser of this defendant further than he held the claims of said

Thompson to pay defendant's debt as before stated; and he has been informed, and he believes it to be true, that said English was not the attorney of said Fleming further than in preparing the deed from him and wife to said Thompson, which he did for each and both said Thompson and said Fleming.

"To the third (3d) interrogatory he answers he was never, before said conveyances, informed by said English that he had made the purchase at execution sale for the use and benefit of said Thompson, and he, said English, never informed defendant that he had so publicly announced; but, on the contrary, said English informed this defendant he had made such purchase for himself, and he would not let Thompson have the lands, as he informed this defendant he bought said lands not for and on account of Thompson, but on his own account, and without any consultation with Thompson, or any regard to him whatever.

"The fourth (4th) interrogatory has been fully answered in the defendant' response to the first (1st.)

"The fifth (5th) has been answered in defendant's response to the first, (1st,) except that he says there was no agreement at all between said Ober, Thompson, and English as to said lands; but said Ober and English alone contracted in reference to the lands in Prairie county, and said Ober & Thompson contracted alone as to the lands in Pulaski county.

"The sixth (6th) interrogatory has been already answered in the response to the first, (1st,) unless as to agreements in writing, and as to this defendant says there were no agreements or contracts in writing other than is evidenced in and by Exhibits D and E to said bill.

"To the seventh (7th) interrogatory defendant answers he is in possession of said lands. He obtained possession of the Prairie lands from said English after the time of his purchase, 27th February, 1868, and he obtained possession of the Pulaski lands at the same time from said Thompson. He went into the possession of the Prairie county lands at the end of the year 1868, after said Bocock's lease from said English expired.

"To the eighth (8th) interrogatory defendant answers he knows nothing more of the said English possession of said lands than he has heretofore stated.

"To the ninth (9th) interrogatory defendant answers, said Thompson did owe said Ober thirty thousand dollars ($30,000) at the time said purchases were made, and the

same was evidenced by various notes, bills, drafts, &c., which defendant will produce, if required; and he states five thousand dollars ($5,000) of such indebtedness entered into the purchase of the Pulaski lands, and none into the purchase of the Prairie lands.

"To the tenth (10th) interrogatory defendant has already well and sufficiently answered."

It will be seen from the pleadings that Ober claims, so far as the lands in Prairie county are concerned, he bought them after all of Fleming's right had been sold and disposed of at judicial sale, and under a judgment lien accrued in the Circuit Court of Prairie county, 21st day of February, 1866, nearly a year before Fleming sold to Thompson. And as to the lands in Pulaski, he had paid Thompson for them $5,000, which T. had the right to sell, as one of Fleming's notes had been paid by T., and this was as much as they were worth. It is a clear proposition that, so far as Thompson was concerned, when he paid the one note he could say what lands should be released, and it was to his interest, of course, to have the lands in Pulaski released, as he no longer owned or pretended to own those in Prairie.

Ober answers specifically as to how and when he paid for the lands, what price, and he states all the facts minutely. He shows he examined all the records that he could, and advised with Judge English and others as to the title to these lands. In all this he is clearly supported by the deposition of B. F. Kerr, (*Trans.*, 104,) and that of Judge English, (*Trans.*, 111.) He has fairly met every requirement of the law, both in his pleadings and in his proof, to establish the fact that he purchased for value without notice. *Kerr on Fraud*, 369–371; *Miller* v. *Traly*, 21 *Ark.*, 22.

The caution shown by Ober in entering into this transaction was indeed extraordinary. The charge in the bill that Judge English advised Ober of any defect in the bill is clearly disproved.

Indeed, English assured Ober the title was good. The judgment of Embree against Fleming was a lien on the Prairie lands from the day it was rendered, *February* 21, 1866. *Gantt's Dig.*, (*Ark.*,) p. 671, *secs.* 3604–5.

Under this judgment these lands were sold at sheriff's sale. The charges made in the bill against this sale all stand without proof. The presumption is the sale was fair, and all was done that should have been done in conducting it. The allegation that English stifled bidding is utterly without proof. The charge, too, that English was Fleming's attorney in the Embree matter, (*Trans.*, p. 4,) is shown by Fleming's own deposition to be untrue. (*Trans.*, p. 99.)

Goodrum and Gray, both in their depositions, (*Trans.*, 102–3, *et seq.*,) show that English said at the sale what Ober sets out in his answer, that he (E.) bought the lands for himself, and would hold them unless Thompson paid him what he owed him. He did so hold them until he sold to Ober. English's offer or promise to let Thompson buy the lands back by paying his fees, was a mere gratuity, and could not be the foundation of any legal obligation for Thomson or his creditors. *Adams' Eq.*, 97, 105; 18 *Ves.*, 84; 4 *J. C.*, 497; 1 *Cowen*, 711.

After waiting for so long a time, English permitted Ober to buy these lands, which he had a right to do. They were charged then with no trust or lien for Thompson or his creditors. *Ellison* v. *Ellison*, 1 *Leading Cases in Eq.*, (*Hare & Wallam notes,*) 237, *et seq.*

The charge that the sale to English was a fraud because of the inadequacy of price is of no moment. When not connected with some acts of fraud on the part of the purchaser or some one in interest with him, the price is of no consequence. *Kerr on Fraud*, 186–8; 19 *How.*, 303; 15 *Ark.*, 184; 20 *Ib.*, 381; 22 *Ib.*, 19.

Great stress is attempted to be placed on the fact that English gave Ober merely a quit-claim deed. While it is true as a general rule, but one not approved by all the authorities by any means, a party holding under a quit-claim deed is not entitled to protection in equity as a purchaser for a valuable consideration without notice; yet in

this case there is another rule of law that infringes upon this one which gives Ober full protection. It is this: The right of Fleming in the Prairie county lands was appropriated by judgment and levy of execution in favor of Embree before Fleming sold to Thompson, and English, the purchaser at the sheriff's sale, is entitled to this defense as much as if he had made an ordinary purchase. *Notes to Bassett* v. *Nosnorthy*, 2 *Leading Cases in Equity*, *pt.* 1, *pp.* 76–77.

The rights secured by English at this purchase were transferred by him to Ober by this deed, and Ober holds these rights just as English did before he sold.

Then Ober is protected. How is it possible in any event for one holding as assignee of Fleming to enforce a vendor's lien against this land (Prairie county) when neither Thompson nor Fleming had any interest in it—when, in fact, Fleming's right, which he pretended to sell to Thompson, had long before that been seized and appropriated by the law? The vendor's lien, as potent as it may be, cannot reach thus far. 1 *Leading Cases in Eq. Sup.; Ib.*, 276, *et seq.*

Among all the transactions proved in this case as between Thompson, Fleming, and English—and there are a a great many indeed—there is but one single piece of testimony that repels the fact testified to by English and Ober as to the land in Prairie county being bought at sheriff's sale by English and in his own name. That is to be found in Exhibit P to Morris' deposition, (*Trans.*, p. 93,) in a letter from English to Thompson in September, 1867. While in this letter English says he bought the land for Thompson and in his (T.'s) name, yet as a fact he did not. He bid himself in his own name, and took the deed that way. The court will construe this letter with all the other declarations of English, as well as his acts in the premises, which means he did buy for himself, but to let Thompson take the land when he paid all he owed Eng-

lish; and this T. never did, and therefore English held the lands and sold them, as he had a right to do. Judge English, in his deposition, (*Trans.*, p. 115,) explains this letter, and all about it, in perfect harmony with the theory already given.

But suppose this letter must override all the other facts and declarations, how far can it be held to affect Ober, who, from his and English's testimony, never heard of it? That letter was not of record; English never told Ober of it, nor did any one else. Ober sought from all sources for information as to the title, and nowhere did he meet with anything of this kind. The law would not hold him bound to know all the private correspondence between these many parties. Can this mere private letter, written after the sheriff's sale, have any influence on Ober's rights, when he not only did not know of its existence, but had every reason to believe there was no such document? It is most respectfully insisted it cannot. If, as the scope of the bill indicates, and as was attempted to be proved, English was the agent of Fleming and Thompson both, and he did not disclose to Ober all the facts—facts which Ober could not reach by the exercise of due diligence—then Ober is protected, and the other parties and their agent must settle the matter between themselves. This is the rule, and no other safe and just one can be adopted. *Bassett* v. *Rosnorthy*, *Sup.*, (Am'r cases in note to same,) 50 *et seq.*

Fraud may be proved beyond dispute as to all the others, but if Ober acted in good faith he cannot be the loser, for the books say: "*If a man* has paid his money in ignorance of the fact that another party has an equitable claim to the property, a court of equity will not deprive him of the benefit of his legal title." *Kerr on Fraud*, 312, *and notes;* 12 *Ark.*, 218.

"The rule of law which secures protection to a *bona fide* purchaser who has dealt in good faith with a fraudulent vendee, applies with equal force to a case where the orig-

inal sale and delivery were subject to conditions of which he is ignorant." *Hall* v. *Hinks*, 21 *Md.*, 406.

Let it be supposed, then, that the sale to English was subject to certain conditions, and English, if you please, was acting fraudulently, yet Ober not knowing these things, the law shields him. This is the plain letter of the whole case. But, as strange as it may appear, notwithstanding these familiar principles of law, the lands were condemned by decree to pay these notes given by Thompson to Fleming, and Ober asks that decree be reversed, and an order entered directing the court below to dismiss the bill.

A. H. GARLAND,
For Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. 251.

ROBERT H. OBER, *Appellant*,

vs.

CHARLES GALLAGHER, *Appellee.*

BRIEF FOR APPELLEE.

On the 3d day of February, 1870, Charles Gallagher, a citizen of the State of Louisiana, filed his bill in equity in the United States Circuit Court for the Eastern District of Arkansas, against Waddy Thompson, a citizen of the State of Tennessee, and Robert H. Ober, a citizen of the State of Arkansas; in which he alleged in substance as follows:

On the 15th day of January, 1867, John T. Fleming and wife conveyed to defendant Thompson, by deed, the lands named in the bill, lying in Prairie and Pulaski counties, in said District, which recited that it was made in pursuance of a former agreement between the parties, made on the 12th day of December, 1866, for the consideration of $60,000, to be paid by Thompson to Fleming in ten equal annual instalments, evidenced by the ten promissory notes of Thompson. It was provided in the deed that a lien was reserved for the payment of the notes for the purchase money. This deed was prepared by English, the attorney of Thompson, and who was his legal adviser generally. The note which fell due on the 1st day of March, 1869, was assigned by Fleming to the plaintiff on the

20th day of March, 1867; and on this note the plaintiff brought suit in New Orleans against Thompson, and on the 7th day of June, 1869, he recovered judgment for $6000, with interest from March 4th, 1869, until paid, and costs of suit. Prior to any of these events, that is, on the 21st of February, 1866, one Embry had recovered judgment in the Prairie Circuit Court against Fleming for $643, debt, and $63, damages, both to bear interest from the date of the judgment until paid, at the rate of ten per cent. per annum, and costs of suit. Execution issued on this judgment April 29th, 1867, and was levied on the greater part of the lands conveyed by Fleming to Thompson on the 15th January, 1867, as above stated. The lands thus levied on were sold under execution, August 19, 1867, and they were bought by English, who announced that he would buy the lands for Thompson, and that the money paid for them would be a credit on the notes of Thompson held by Fleming or his assignees. This circumstance prevented bidding at the sale, and the lands, worth $40,000, were bought by English for $844.70. That at the time that this judgment was rendered in favor of Emybr English was the attorney of Fleming, and was retained as such in that particular case. By this time Thompson had become insolvent, and it occurred to him that he could get English to hold the lands nominally for himself, but really for Thompson, and that he could have English convey the lands as his own, but really for the benefit of Thompson; and that thus he could get rid of the lien on the land for the payment of the purchase money. English accordingly made a conveyance of the lands to Ober, by quit-claim deed, for an expressed consideration of $27,000, though English did not receive more than $1000; the deed being a quit-claim.

English was not in possession of the lands, and the benefit of the sale enured to Thompson, who paid to English whatever he received. On the same day that English conveyed to Ober, Thompson also conveyed to Ober the remaining lands which had not been sold under execution, for the nominal consideration of $5,000; and thereupon Thompson, who had been all the time in possession of the lands, surrendered the possession to

Ober. The purchase was made by Ober with full knowledge of all the facts, and particularly that English had bought, at the execution sale, not for the purpose of defeating the title of Thompson, but for the purpose of strengthening it. Ober paid nothing for his purchase, but took the lands in payment of pre-existing debts due to him from Thompson, well knowing the latter to be insolvent. The sale was made with a view to hinder and defeat the claims of the creditors of Thompson, and particularly to defeat the demands of the plaintiff. Fleming in the meantime had been adjudicated bankrupt; and both he and Thompson were hopelessly insolvent. The bill prayed that the plaintiff might be decreed to have a vendor's lien on the land, and that the same might be foreclosed. The notes set out the consideration for which they were given.

In the suit on the note in New Orleans Thompson pleaded that it was given for lands in Arkansas, and that the consideration had entirely failed through the fraud of Fleming; but his plea was not made good, and judgment was rendered against him, as we have seen.

The defendants entered their appearance and filed a demurrer based on the following grounds:

"1. Said bill shows that said Thompson is a non-resident of said district, and not within the jurisdsction of this court.

2. Said complainant, as the assignee of the note named in the bill, did not take any lien, nor has he any under and by virtue of the assignment of said note.

3. Said bill fails to show that John T. Fleming, the original holder and payee of said note, could have brought suit thereon in this court.

4. Said bill fails to show that complainant has exhausted his remedies at law to collect the debt named in said bill.

5. The judgment exhibited with said bill rendered in the State of Louisiana merged the note named in the bill, and this court has no jurisdiciion to enforce such judgment as a lien against the lands described in the bill, or to enforce it at all until a judgment is rendered on the same in this court at law.

6. Said complainant having elected to sue said Thompson at law, he must abide such election, or show that he has used all remedy under such suit, but to no purpose; which said bill does not show."

The demurrer was overruled. Thompson rested; and Ober answered. The answer is to the following effect:

Defendant admitted the sale and conveyance by Fleming to Thompson, and the reservation of a vendor's lien. He asserts that Fleming did not convey all the land he had agreed to convey by 462&32-100 acres, and that the title to a part of the lands conveyed had failed. This is stated on information and belief. The value of these lands is not stated; but defendant insists that the plaintiff, on account of these deficiencies, is entitled to no relief; admits that English was the general attorney of Thompson; does not admit that plaintiff became the owner of the note named in the bill; nor that Fleming is a citizen of Tennessee. Believes that plaintiff obtained the note without consideration, and by a scheme between himself and Fleming to defraud Thompson. Sets up the recovery of the judgment in favor of Embry against Fleming, the sale and purchase by English, who did not stifle bidding at the sale, but bought for himself. Denies that English was the attorney of Fleming. Denies that there was any combination on his part with any one, to render ineffectual the lien of Fleming; defendant did not know that Thompson was insolvent, but believed him to be not only solvent, but a man of large means. Denies that he paid any premium to English. Denies that English was his legal adviser. Defendant bought the lands in good faith, for his own use and for a valuable consideration. Admits that English gave only a quit-claim deed, but says that it is not true that he paid English but little more than English had paid for the land. Admits that English never was in possession of the lands, but says that English placed one Bocock in possession for 1868, and says that it is not true that Thompson had possession. It is not true that English did not receive above $1,000 on the sale; or that the residue of the money was paid or secured to Thompson; or that English was paid whatever he received by Thompson. The

lands in Pulaski County were conveyed by Thompson to defendant for $5,000, and they were worth no more. Denies that he made the purchase to hinder and delay the creditors of Thompson or the plaintiff; he did not then know that the plaintiff was a creditor, or held either of the notes. Admits that Fleming is insolvent and has been adjudicated bankrupt. The defendant believed that Thompson had large means until a short time before he bought. At the time of his purchase, Thompson owed him about $30,000, and Thompson had assured him that he had claims in the hands of English amounting to at least $50,000, which would make the debt good. He wrote to English about it, and received for reply that this was true and that the claims were good. He relied on this until a short time before the purchase, when he went to Memphis, and then for the first time learned that Thompson was insolvent, and that the lands in suit were not his, but that they belonged to English. Thompson had frequently offered to convey the lands in settlement of what he owed to plaintiff; but now, finding that Thompson could do nothing, he learned from English that the claims in his hands had become worthless; that he owned the lands in Prairie County; that his title was good and that he would not let Thompson have them. Defendant represented to English that he had relied on his statement of the value of the claims in his hands, and thereupon English agreed to convey to him the lands for $2,000, which was paid through a bill to a bank at Little Rock, negotiated through Thompson, which sum defendant afterwards repaid Thompson. The consideration in the deed from English to defendant was stated at $27,000, in order to enable the latter to raise money on the lands. For the lands in Pulaski County, defendant allowed Thompson a credit of $5,000, which was their full value; and as Thompson had paid off the first note due to Fleming for $6,000, there was nothing due on the purchase of Thompson. There was no agreement at all between defendant, English, and Thompson as to the lands; defendant contracted with English alone for the lands in Prairie County, and with Thompson alone as to the lands in Pulaski County. He went into possession of the Prairie County lands

at the end of the year 1868, at the expiration of Bocock's lease from English.

At the time of the purchase, Thompson owed defendant $30,000, of which $5,000 entered into the purchase of the Pulaski County lands, and none into the purchase of the Prairie County lands. This would leave a balance due to the defendant from Thompson of about $25,000.

We shall see that this answer contradicts itself in one important particular; and that in every material allegation it is denied by a witness introduced by himself, and whose veracity is beyond question.

On the 3d of October, 1870, the plaintiff amended his bill by setting up assignments to himself of the other eight notes given by Thompson to Fleming. By agreement the answer to the original bill was taken as an answer to the amended bill; replication was entered and the cause was set down.

Before examining the question of law arising on the pleadings, it is deemed best, for the advantage and convenience of the court, to take up the thread of events out of which the litigation has grown, in the order of time of their occurrence. The pages of the *record* will be referred to in parenthesis.

At the commencement of this inquiry we find John T. Fleming to be the owner of the lands described in the suit. In 1857 or 1858, he became the surety of one Stone to Jordan N. Embry in a contract. He was sued on this contract in the Prairie Circuit Court, about the beginning of the rebellion. In the early part of the war Embry sent an agent named Bond to Fleming with a letter, proposing that the latter should pay $400 or $500 in settlement of the suit. Fleming paid the money and took a receipt. (287.) In June, 1867, while on a steamboat in Arkansas, Fleming was served with a writ of some kind, requiring him to appear in the Prairie Circuit Court and answer to a suit brought by Embry, and this was the first of the matter that he had heard since he had paid the compromise money to Bond. Fleming went home to Tennessee intending to return to Arkansas to defend the suit in October, the time when the writ was returnable; but in September he met with a serious acci-

dent which prevented him from traveling. One Wilkinson, who lived near Little Rock, was at his house on the day that the injury occurred. Wilkinson was a partner of Waddy Thompson. As he was to leave for Little Rock on the next day, Fleming told him to speak to Judge English and to get him to defend the Embry suit for him, saying that he would forward the necessary papers; which, in effect, he did in a few days, by mail, addressed to Wilkinson, to the care of English. These papers were the letters of Embry and the receipt of Bond. (290.) English never received the papers, (333) and Wilkinson said that they never came to hand. Fleming was not able to come to Arkansas until the spring of 1868, and in the meantime the lands had been sold under the Embry judgment, and had been bought by English; but we must note certain intervening occurrences.

On the 11th December, 1866, Fleming made a written agreement to sell the Clear Lake plantation, that is, the lands named in the suit, to Waddy Thompson, for $60,000, payable in ten annual instalments, the first payable March 1, 1867. A deed was to be made by Fleming to Thompson, reserving a lien on the land for the payment of the notes. (342.) Accordingly, on the 15th January, 1867, Fleming and wife conveyed the lands by deed to Thompson. The deed set out the notes given for the lands, and contained this provision: "But it is expressly agreed by the parties of the first and second parts that the said parties of the first part shall and do hereby retain a lien upon all of said lands for the payment of said ten promissory notes given for the purchase money, and when the same are fully paid off said lien is to stand released and discharged." (24.) The notes also referred to the lien. (118). Thompson went into possession before the deed was made, for on the 26th December, 1866, he rented them to Morris, Smith & Morris for five years for $50,000. To secure the rent they executed a deed of trust to English, the attorney of Thompson, conveying the lease, the stock and farming implements on the place, and some other property. (380). From this time on, English was the general attorney of Thompson, and a sort of general agent, as well as trustee under the deed of trust. (376&363).

English went over to the Prairie Circuit Court in August, 1867, and there, on the 19th of that month, he found the lands of the Clear Lake plantation, which lay in that county, advertised for sale under execution on a judgment rendered in favor of Embry against Fleming. (328.) And just here we may remark that in Fleming's deposition there is an obvious mistake as to dates, as it must have been in 1866 when the writ was served on him, and not 1867 ; a mistake which any one after the lapse of a considerable period of time is liable to make when trusting to memory alone.

But to return to English and the sale. English, seeing that the execution was for but a small sum, and that the lands were very valuable, he having been the attorney of Fleming and being also the attorney of Thompson, as well as his agent and trustee, naturally felt some concern at the situation, as the sale was absolute. He tried to get the sheriff and the local attorney controlling the execution to hold it up until he could write to Thompson and Fleming. Failing in that, he made an agreement with the attorney that he would bid in the lands, and would write to Thompson to get the money to pay the bid. He was disposed to act as a friend to both parties. (297). English mentioned the situation and his intentions to various persons, (330), and one of the witnesses thinks that he mentioned them publicly at the sale, and this was Gray, the sheriff who conducted the sale. (301). English thinks that this had not the effect to prevent competition in bidding; but it is hard to say what the effect of such an arrangement might be on the public mind in a particular case. The general effect is well known, and the fact that lands worth $55,000 were sold for $844.70 leads us to suppose that there was no exception in this case, and that the lands brought nothing of any consequence because it was thought that they were being bought in for persons holding the title, who could bid any amount for them, as they would in any event only have to pay off the execution.

English intended that if Thompson sent him the money he would have the deed made to him ; else he would have the deed made to himself. Some time after, and after English had had

time to hear from Thompson, he sent the sheriff the money, and the deed was sent to him made out in his name and dated August 24th.

On the 5th of September English wrote to Thompson a letter, in which he told him of his surprise at finding such a judgment and execution, which were a prior lien to the purchase of his correspondent, particularly as Fleming had asserted that there was no judgment against him in Prairie county; saying that Fleming "was no doubt honest in so stating, but he was mistaken." He said that the sheriff had "sold the lands, the whole that he had levied on under the execution, and I bid them off in your name for $844.70 in the aggregate, that being the amount of the judgment, interest and costs. The sheriff took my personal obligation for the money and executed to you a deed for the lands, to be delivered to me when I pay him the money, which I promised to pay as soon as I could write you and obtain it. You will therefore send me a check on the bank here for the amount, or if not convenient to do this, authorize me to draw on you for the money. Your next note to Fleming is not due until January next, I think, but you will have to charge him with the sum so paid for him, with interest, commissions, &c., for advancing. I was compelled to purchase the lands or they would have been lost to you by sale to some one else. When the money is paid to the sheriff, I will take such a receipt from him as will answer your purpose in settling with Fleming." (272.)

Morris, the partner of Thompson, answered this letter, saying that the draft of English for the amount thus paid would be duly honored. (170.) English also charged Thompson with the amount of his bid at the execution sale (387), and on the 19th October, 1867, Thompson drew his draft on his firm of Thompson & Cummins, of Memphis, for $1,000, in favor of English, (355.)

Thompson had also a house in New Orleans, Waddy Thompson & Co., and that house paid one-half the amount, it being intended to cover the amount paid by English at the execution sale, (171&147).

Ober was in business in New York as a member of the house of Ober, Nanson & Co. About June, 1867, they wrote to English, saying that Thompson wanted an advance of $10,000 from them, and had offered as security the claims in English's hands for the rent of the lands, amounting as already stated to $50,000. English answered, saying that he had the securities, and explaining the matter. (344). But the tenants, Morris, Smith & Morris (not to be confounded with the witness Morris, at New Orleans, who was a partner of Thompson,) failed in business, and English sold out the property conveyed in the deed of trust, including the lease itself, on the 10th February, 1868. (357). English bid in the lease in his own name for a trifle, and left Bocock on the lands as a tenant for 1868, (357).

This settles the question of possession so far as English was concerned, for he neither claimed nor could have asserted possession as against Thompson, his beneficiary, and Bocock and Thompson went into partnership in the cultivation of the lands for that year. (172).

In December, 1867, the two firms of Thompson owed the company of Ober $25,783.02, with interest and commissions besides. (166).

On the 29th January, 1868, Thompson got English to write a notice to Gallagher to the effect that the consideration of the notes had failed, and that they could not be paid. (369&280).

At this time there was no thought on the part of any one of putting up the purchase of English at the execution sale, as an independent title in English, for this notice does not allege any title in English, or refer to the execution sale, but places the failure of consideration on the ground that there were not as many acres of land in the deed from Fleming to Thompson as were agreed to be conveyed.

Thompson was by this time becoming insolvent, and this gave Ober trouble.

Ober came to Memphis to see his debtor, who offered him $12,000 in full settlement, or to let him take the Clear Lake lands, with the title just as it stood. (177).

Ober concluded to take the lands. He came over to Little Rock and told English that there was no chance to save himself unless he took the lands. (360).

English told him the circumstances under which he had bought at the execution sale. (347).

We find that in making the purchase Ober was uneasy as to the title which he was to get from English, and that he talked with Thompson on that subject, and that Thompson quieted his fears. (360). On the theory of the answer this was none of Thompson's concern, as the transaction was between English and Ober alone. The answer says that the consideration paid for the Prairie county lands was $2000, paid to English in a bill negotiated in a bank at Little Rock, through the kindness of Thompson, and that Ober afterwards repaid this sum to Thompson. (104). English, Ober's witness, says that he agreed to convey to Ober, and did convey, in consideration that Ober would pay him $2000, which was the amount that he considered Thompson as owing him for fees, services, &c., yet that Ober never did pay it. (362). Ober got the deed, but did not pay English anything.

There is a flat contradiction between Ober and his witness on this point, and the answer is wholly unsupported by proof. Had it been true that Ober paid the $2000 to English in the manner stated, he would, one would suppose, have found the bill negotiated at the bank as evidence of the transaction. Or he might have proved that fact by Thompson, through whose friendship the money was obtained. But to do him justice, he did make an attempt in that direction. He wanted Thompson to give him a written statement that when he bought the place, he knew nothing of any defect in the title, and that he was an innocent purchaser. But Thompson, having no longer any interest in the matter, relapsed into a state of primitive virtue, in a very edifying manner, and remarked that "if he was put on the block (stand) as a witness, he would have to tell all he knew about it," (221), a catastrophe for which Ober was unprepared.

Although Thompson thus supposed a case in which he might have to tell the truth, yet he thought it not improper that he

should make some perquisites out of such a valuable commodity. The way that Thompson talked to Gallagher will set forth his true state of mind. Gallagher had issued process on the judgment in New Orleans, and Thompson went to see him on the subject; there being an existing levy on certain assets of Thompson in the hands of Pike, Brother & Co., bankers, in New Orleans: Mr. Gallagher gives the following account of the interview:

"Thompson came to my office, told me he had come to see me; said he had been to see Mr. Pike; that the service of the execution on Pike, Brother & Co., was something he had not expected; that it was a hard blow to him, and injured his credit, and would prevent him from going on in business. He said that Mr. Pike told him that if I should release the process of execution, he would turn over those assets to him, Thompson, but otherwise he could not do so. He was, or so expressed himself, especially desirous to get control of the note of Perry Fuller. He said that Perry Fuller was then in the city, and would pay him the money on this note, but would not pay me. He then said he had something to say to me, but it was not to be used as evidence against him. I asked him what that was. He said that if I would release the levy of execution, so that he could get control of those assets levied on or attached, he would go before a Notary Public in this city and make affidavit to certain facts which would be of advantage to me. He said that he and Judge English, at Little Rock, were the only persons who could put me right on the goose. I asked him what that meant. He replied to enable me to get my rights in regard to those Clear Lake notes, and my vendor's lien. He said there were some irregularities up in Arkansas about the sale to Ober. He said that Ober was a fool, that he had offered him $12,000 in money for the Clear Lake place with all the difficulties about which he apprised him, and Ober, with his eyes open, had chosen to take the place. I told him that if I could secure my vendor's lien on the Clear Lake place, I would be satisfied with it, as I wished to keep out of law. Thompson then asked me to sign an instrument for the release of those assets, which I de-

clined to do at that time, because I wished to consult some lawyer familiar with the laws of Arkansas, but it was a season of the year when they did not usually come here, and I could find none in the city, so the affidavit was not made." (218).

Ober states in his answer that for the Pulaski land he credited Thompson with $5000 on his debt, but that none of the indebtedness entered into the purchase of the Prairie lands, which he bought from English for $2000. (109). That is disproved. It is shown that the two firms of Thompson owed Ober $25,744.90, and that the Clear Lake lands were taken in full payment of the debt, (167), and that Ober gave a receipt for the entire amount, dated February 29, 1868, the day of the conveyances from English and Thompson. (192.)

These contradictions of the answer will not surprise any one who observes that Ober in his answer in one place says that he knew nothing of Thompson's insolvency at the time of the purchase (96), and in another place that he found out that fact when he got to Memphis, and before he went to Arkansas. (103).

For the sake of completing the account of the transactions between the original parties, we have thus far omitted the statement of the beginning of the connection of Gallagher with these affairs. To that we now direct the attention of the court.

After the sale by Fleming to Thompson, in March, 1867, the former went to New Orleans, where he met Thompson. Besides the two houses of Thompson already mentioned, he had a third, at Shreveport, doing business under the name of Thompson, Morris & Co., and Fleming owed that house $6,500. Fleming owed Gallagher also, and he wished to negotiate the notes of Thompson to Gallagher, so as to pay his debt to Gallagher and to get some money for himself, and to pay off the debt which he owed to Thompson, Morris & Co.; and Thompson was very anxious that this should be done, so that he could get the $6,500 from Fleming. (165&166). Thompson therefore aided Fleming in negotiating the notes with Gallagher, there being nine unpaid notes, amounting to $54,000. The amount that Fleming owed Gallagher was $24,367.64. (211). Thompson

told Gallagher that the notes were secured by a lien on the lands, and that he would do well to get them. (213). Gallagher, under these circumstances, took the notes, discounting them at 8 per cent. and paying to Fleming the difference between the $54,000, less 8 per cent., and the $24,367.64 which Fleming owed him (214); and out of the money thus received, Fleming paid to Thompson the $6,500 due from him to the house of Thompson, Morris & Co. (184).

Such are the principal facts in the case; and on these facts the court below decreed to Gallagher, against Thompson, $49,903.00 and the enforcement of a vendor's lien on the lands for that amount, subject to the lien of the remaining notes in Gallagher's hands not due at the time the decree was rendered. (129).

The pleadings alone are decisive of the case.

Ober states in his answer that English was not in possession of the lands.

But whoever asserts the defence of innocent purchaser for a valuable consideration without notice must allege that he bought from one who was in possession, the fact of possession being alone enough to put one on inquiry as to the validity of the title. *Boone v. Chiles*, 10 *Pet.* 211; 2 *Dan. Chy. Pl.* 776; *Buck v. Martin*, 27 *Ark.* 6; *Tuley v. Ready*, *Id.* 98; *Byers v. Fowler*, 12 *Id.* 218; *Cook v. Bronaugh*, 13 *Id.* 192.

This defect in the answer could not be helped by any proof; for the allegations and the proof must correspond, or else the defence goes for nothing. *Boone v. Chiles*, *ubi. sup.* 209&212; *Byers v. Fowler*, *ubi. sup.*; *Miller v. Fraley*, 21 *Ark.* 22.

Besides, the deed from Fleming to Thompson was recorded, and that was notice to all the world. *Cordova v. Hood*, 17 *Wall.* 1.

As Gallagher took the notes from Fleming on the assurance of Thompson that they were secured by a lien, Thompson is evidently estopped from denying the validity of the lien; and Ober stands in his shoes. *Mitchell v. Butt*, 45 *Ga.* 162; *Hadley v. Nash*, 69 *N. C.* 162; *Latham v. Staples*, 46 *Ala.* 462.

English, besides not being in possession, never bought for

himself. And never claimed for himself. In that respect, this case is much like that of *Swayze v. Burke*, 12 *Pet.* 11.

Ober holds under a quit-claim deed, and therefore he cannot defend as an innocent purchaser. *Oliver v. Piatt*, 3 *How.* 410; *Morse v. Godfrey*, 3 *Story*, 365.

On the facts of the case it appears conclusively that Ober bought from Thompson alone; the consideration was paid to him alone; even the amount that Ober agreed to pay to English was to be in satisfaction of what Thompson owed English, and was therefore the same thing as if to be paid to Thompson. But it was never paid, and Thompson afterwards settled his debt with English personally. The agreement of Ober to pay the debt of Thompson to English was not in writing; and therefore we assume that it could not be enforced; but if any one could enforce it now, it would be Thompson, and not English, who has been paid.

Thus the purchase was not made in the manner stated in the answer; but was made from Thompson only. Buying from him, of course Ober could get no betetr title than Thompson had, for there is no allegation that Thompson deceived Ober. In short, the defence breaks down in every direction, and has no coherence whatever.

The bill charges that at the time of the beginning of the suit, Fleming, the assignor of the notes, was a citizen of Tennessee; and it is asserted by the appellants that in order to give the Federal Court jurisdiction, it must have been made to appear that he was a citizen of another State than Arkansas at the time that the assignment was made.

That has never been understood to be the law.

"There can be no doubt that, as a general rule, the jurisdiction depends on the character of the parties *at the time the suit is brought;* and this is the only inquiry for the Court in the cases. And I think the same rule must be adopted in this case. The limitation is confined to the time when the suit is commenced." *Thaxter v. Hatch*, 6 *McLean*, 68.

"It is quite clear that the jurisdiction of the Court depends upon the state of things *at the time of the action brought.*" MARSHALL, *C. J.* in *Mollan v. Torrance*, 9 *Wheat.* 539.

"But the petition does not show that the endorsers through whom the plaintiff claims were not citizens of Louisiana *at the time the suit was brought.*" STRONG, *J., in Morgan v. Gay,* 19 *Wall.* 82.

If there ever was any doubt on that question, it has been settled long ago.

It is also objected that as Thompson was a citizen of Tennessee, the Court had no jurisdiction of his person, or of the cause, although he entered his appearance. But that question was settled in *Taylor v. Cook,* 2 *McLean,* 576; *Herndon v. Ridgway,* 17 *How.* 425, *and Jones v. Andrews,* 10 *Wall.* 327.

The question as to whether the assignee of a note given for the purchase money of land, where a lien is reserved in the deed by which the land is conveyed, can enforce the equitable lien of the vendor, came before the Supreme Court of Arkansas for the first time in the case of *Sheppard v. Thomas,* 26 *Ark.* 617, and the bare majority of the Court held that the lien did not pass by the assignment. This decision was not acceptable to the bar, nor to the public; and soon afterwards an act was passed by the Legislature declaring that where a lien was expressly reserved in the deed, the assignment of a note thus secured by the lien should pass the lien to the assignee. The act proved to be unnecessary; for soon afterwards the same Court overruled the decision in *Sheppard v. Thomas* on this point. This was in the case of *Campbell v. Rankin,* in which the Court referred with approval to the decision on this point made in this very case on the demurrer by MR. JUSTICE MILLER, then on the Circuit. The Court seemed to lay some stress on the fact that the vendor, vendee and assignee were all before the Court; but this is believed to be the ordinary way of overruling cases; that is, by the suggestion of some thin distinction. However that may be, in the Federal Courts Fleming could not be a necessary party. *Batesville Institute v. Kaufman,* 18 *Wall.* 151.

In the case of *Turner v. Hornor,* subsequently decided by the Supreme Court of Arkansas, which was a case where the vendor had made a conveyance, but had reserved no lien, the Court held that the assignment did not carry the lien with it; and distin-

guished that case from one where a lien is reserved, by saying, "Where the title to the estate is not parted with, or the debt is secured by an express lien by contract, the rule is different."

The opinions of the Court in these two cases not having been yet printed, copies are hereto annexed for the convenience of the Court.

Certified copies will be found on file in this cause.

The last objection that we shall notice, is that owing to the judgment in Louisiana on the notes, there could be no foreclosure of the vendor's lien.

It is the settled law in Arkansas that the vendor may sue at law on the note for the purchase money, and in equity for a foreclosure of the vendor's lien, at the same time; and although he is, of course, entitled only to one satisfaction, yet he is entitled to costs in both cases. See *Smith v. Robinson*, 13 *Ark.* 533; *Very v. Watkins*, 18 *Id.* 553.

If the arguments for the appellant were correct, the proceeding in chancery would come to an end as soon as a judgment should be rendered in the suit at law; and hence the vendor could not recover his costs in the chancery suit; at least it would seem that he ought not to do so. The doctrine of the equitable lien of the vendor is based on the fact that it is unjust for the vendee to hold the land sold without paying for it; and this consideration is nowise affected by the manner in which the existence of the debt happens to be made evident, as by bill, note, bond, parol, or judgment. In either case, the debt remains unpaid, and it is inequitable that the vendee should keep land for which he has not paid. It is true that in some of the States the vendor is compelled to exhaust his remedies at law before proceeding in equity; but this, as we have seen, is not the case in Arkansas, where the lands lie, and where this suit was brought.

In the case of *Turner v. Hornor*, *ubi sup.*, it is evident from the language of the Court that the vendor's lien would have been enforced in favor of the assignee of a judgment, but for the fact that there was no lien reserved by contract, and that therefore it could in that case only exist in favor of the vendor as a right strictly personal.

There is evidence that Fleming promised to insert in the deed some additional lands, but their value is not proved; and there is every reason to suppose that Thompson got substantially the lands for which he bargained.

The decree was personally against Thompson alone; and he set up no defence going to the consideration of the notes. As Ober is in possession of the lands, he cannot set up any defect of title to avoid the payment of the purchase money. *Peay v. Capps*, 27 *Ark.* 165; *Lewis v. Boskin, Id.* 61; *Hoppes v. Cheek*, 21 *Id.* 588.

Besides, the defence as to the failure of consideration was adjudicated in the suit in New Orleans.

Respectfully,

U. M. ROSE,
For Appellee.

OPINION OF THE SUPREME COURT OF ARKANSAS, DELIVERED ON THE 29TH DAY OF DECEMBER, 1873, in the case of

LEONIDAS CAMPBELL, *Appellant*,
vs.
ROBT. P. RANKIN, *et al.*, *Appellees.*
} Appeal from Phillips Circuit Court.

This was a bill to enforce a vendor's lien, &c. The bill was filed by Leonidas A. Campbell, in the Phillips Circuit Court, in October, 1866, and its material allegations are as follows:

In January, 1861, Robert P. Rankin sold to Archibald S. Dobbins, for $210,000, a large plantation in Phillips county, with the slaves, horses, mules, cattle, hogs, &c., thereon. Dobbins paid Rankin $25,000 of the purchase money in cash, and agreed to pay the remainder in several annual installments, which

were subdivided and evidenced by thirty-two notes, one of which was for $9000, payable 12th January, 1862. By deed bearing date on the 13th January, acknowledged and delivered on the 7th, and recorded on the 11th March, 1861, Rankin and wife conveyed the property, real and personal, to Dobbins. The deed states the terms of the contract of sale, describes the property, and all the notes by dates, amounts, &c., given for the purchase money, conveys the property conveyed to secure the payment of the notes in the following words "It is further contracted and agreed, however, that said parties of the first part, in order to secure the payment of each and all the deferred payments aforesaid, evidenced by the notes aforesaid, do hereby retain a lien on all the real estate, slaves, and other personal property herein above conveyed, and upon all increase of said slaves, which may take place between this time and the payment of all the said notes; and they will hold and retain said lien on all said property, real and personal, until such time as the whole consideration of the sale herein above set forth is fully and finally paid."

Some-time in the year 1861, Rankin endorsed the note for $9000, payable 12th of January, 1862, to Campbell. The note is an ordinary promissory note, dated at New Orleans, payable to the order of Rankin, at the Bank of Louisiana, in New Orleans, for value received, bearing eight per cent. interest. The endorsement, "Pay Leonidas A. Campbell," sighned by Rankin.

The bill alleges that Campbell took this note in due course of trade, and that no part of it had been paid, and that by the assignment of the note, he had become the mortgagee of Dobbins, and subrogated to all the rights of Rankin, under said deed and mortgage, for the collection and security of said note, &c.

That Ward, Hunt & Co. were the owners and assignees of four of the notes secured by the deed, which are described. That James O. Harrison was the owner of one of the notes, and the Northern Bank of Kentucky, another; and that the complainant had made diligent inquiry, but had not been able to ascertain who were the owners of the other notes described in the deed, nor how many of them were unpaid.

He prays that Rankin and Dobbins, both of whom are made defendants, be required to discover which of the notes described in the deed were unpaid, and who were the owners and holders thereof; that when discovered, they might be made defendants, with the holders of notes above named.

The bill further alleges that Rankin was in possession of the land described in the deed, holding or claiming the same under some contract or agreement with Dobbins, but that he held them charged with all the equities created by the mortgage lien retained in the deed, which had become vested in complainant by the assignment of said note to him, &c.

That by the proclamation of the President of the United States, and the Constitution and laws of the State of Arkansas, the slaves mentioned in the deed had been emancipated; and that all the other personal property had been wasted or destroyed by the ravages of the late war, leaving no portion of the mortgaged property upon which the lien existed, that could be subjected to the payment of the debts, except the real estate described in the deed.

Prayer for the discovery as above, that the lien retained in the deed be decreed to operate as a mortgage upon the property therein described, to secure the payment of the unpaid purchase money expressed in the deed and evidenced by the notes; that the court marshal the debts secured by the mortgage and ascertain the amount of purchase money remaining unpaid and a lien on the lands, that complaint be subrogated to the rights of Rankin, &c.; that the holders of the notes above named, and others when discovered and made parties, be required to unite with complainant in the enforcement of the lien retained in the deed; that the amounts of debts remaining unpaid, be declared a lien on the lands, &c.; that a decree be rendered for the whole amount of the debt and interest, &c., and the lands sold for the satisfaction thereof, and the fund brought into court, and appropriated in payment of the notes, &c.; that Rankin be decreed to hold possession of the lands, subject to the lien retained in his deed to Dobbins, and that upon a sale of the lands, he be required to deliver possession thereof to the purchaser, and that the equity of

redemption of Dobbins, or Rankin, &c., in the lands be barred and foreclosed, and for general relief.

Rankin filed a demurrer to the bill, which was sustained and the bill amended.

Harrison and the Northern Bank of Kentucky entered their appearance, and consented that a decree might be entered in accordance with the prayer of the bill.

A decree *pro confesso* was entered against Dobbins, Hunt and Ward.

Rankin filed an answer to the bill, as amended, which contained a demurrer.

In the answer, he admits the sale of the lands, etc., to Dobbins, the execution of the notes, the deed, the retaining of the lien upon the property, etc., as alleged in the bill. But denies that the lien was a mortgage, and avers that it was personal, and not transferred by the assignment of the notes. Admits the amancipation of the slaves, the waste of the other personal property, the assignment of the note for $9,000 to Campbell, and that no part of it had been paid. Denies that by the assignment of the note, complainant had become the mortgagee of Dobbins, and subrogated to the rights of Rankin, etc.

Admits that all of the notes executed by Dobbins to him were unpaid, and states the names of the holders thereof so far as he knew them. Admits that he was in "possession of the lands under and by virtue of an arrangement with Dobbins." And insists, by way of demurrer, that the note sued on was not a lien upon the lands described in the deed in favor of complainant as assignee thereof.

The complainant filed a replication to the answer of Rankin, and the cause was continued. At a subsequent term, the demurrer of Rankin was submitted, and sustained, etc. Campbell appealed.

In *Shall, administrator, et al. v. Riscoe*, 18 *Ark.* 162, it was held, on weight of authority, that where the vendor conveys land by deed, taking the note of the vendee for the purchase money (and reserving no lien in the face of the deed for the payment of the note), a mere assignment of the note does not

transfer to the assignee the benefit of the vendor's equitable lien upon the land for the payment of the purchase money. This case was approved in *Williams et al. v. Christian et al*, 23 *Ark.* 257.

In *Smith v. Robinson et al.*, 13 *Ark.* 533, it was held that where the vendor gives a bond to make title on the payment of the note for the purchase money by the vendee, the transaction is security for the debt, and the same, in effect, as the making of the deed and taking a mortgage back to secure the payment of the note.

And in *Morre & Cail, administrators, v. Andus*, 14 *Ark.* 635, that the assignment of a note thus secured, carried the lien or security with it, as an incident to the debt. In this case, the Court said: "Whenever we assimilate the sale of land, by means of a bond, etc., to make title on payment of the purchase money, to a conveyance and mortgage back to secure the same end, the usual incidents of a mortgage attach to the transaction, and the rights of the parties growing out of it are to be governed by analogous rules. The weight of authority, no doubt, is that the equitable lien of the vendor is personal to him, and is not, unless under some peculiar equitable circumstances, assignable, etc." * * * But "clearly the lien, under a bond for title on payment of the purchase money, being expressly reserved by contract tantamount to a mortgage security for the benefit of the vendor, and the note for the purchase money transferable like any other chose in action made assignable by law, the assignment of the note tacitly carries with it the vendor's lien by way of security, and as an incident to the debt. The value of the note as a negotiable instrument in the hands of the vendor, would be impaired, if the security could not accompany a transfer of it to an assignee, etc."

In *Williams et al. v. Christian et al.*, 23 *Ark.* 256, held, that where a note for purchase money thus secured is assigned by the vendor without recourse, the lien does not pass by the assignment, but the assignee impliedly relies on the personal responsibility of the maker of the note.

In *Crawley v. Riggs et al.*, 24 *Ark.* 563, it was held that the equitable lien of the vendor might be enforced by one holding the notes of the vendee as collateral security for the payment of a debt of the vendor; that the holder of the notes was subrogated to the equities of the vendor. In that case, the holder of the notes filed the bill to enforce the lien, and made the administratrix of the vendor, and the vendee, defendants; all the parties interested were before the Court.

The decision in this case was followed and applied in *Carlton v Sessions et al.*, 28 *Ark.*

In *Hutton, administrator, et al. v. Moore, administrator*, 26 *Ark.* 396, this Court said: "The better opinion is, that when a vendor conveys title without reservation, his lien is an individual equity, of no force until declared by a Court of equity, and does not pass as a right to an assignee of the notes of the purchase money."

But where the vendor, as in that case, withheld the title, taking notes for the purchase money, showing on their face that they were given for the lands, the lien of the vendor passed to the assignee by assignment of the notes.

In *Sheppard v. Thomas*, 26 *Ark.* 626, the vendors executed a deed to the vendee for lands, etc., reserving a lien upon the face of the deed for the payment of notes taken for the purchase money, and assigned the notes to Thomas, who filed a bill against the vendee to enforce the lien. A majority of the Court held that the lien reserved by the vendors in the face of the deed did not pass to the assignee by the assignment of the notes, and that he could not maintain a bill against the vendee to enforce the lien.

This case was followed by a majority of the Court in *Jones v. Doss et al.* 27 *Ark.* 518.

In both of these cases the views of a minority of the Court were expressed in dissenting opinions.

By *section* 28 *of the act of April* 24, 1873 (Pamphlet acts of 1873, p. 217), the Legislature declared:

"The lien or equity held or possessed by the vendor of any real estate, for the sale of the same, shall inure to the benefit of

any assignee of the notes or obligations given for the purchase money of such real estate, and such lien or equity shall be assignable, and payable by indorsement or otherwise in the hands of such assignee, and any such assignee may maintain an action or suit to enforce the same; *Provided*, the said lien or equity is expressed upon or appears from the face of the deed of conveyance."

In the absence of any clear expression showing it to have been the intention of the Legislature to give this act a retrospective effect, we think it safest to hold that it can only be applied to assignments made after the passage of the act.

The notes in this case having been assigned before the passage of the act, the case must be decided on general principles, but the question involved in the case, and upon which the Court has heretofore, as above indicated, been divided, has been rendered of less practical importance by the passage of the act.

Here, upon the face of the deed, the vendor retained an express lien upon the lands conveyed for the payment of the notes executed by the vendee for the purchase money.

This lien was created by contract of the parties, expressed upon the face of the deed, and put upon the public records. This was not technically a mortgage, but like a mortgage, it was a security for the payment of the debt; as much a security for the payment of the debt as if the vendor had made the deed absolute on its face, and taken a mortgage back from the vendee to secure the payment of the notes given by him for the purchase money.

The lien reserved in the face of the deed being like a mortgage, a security for the debt, I should hold if the question were *res novo* in this Court, as was held by the dissenting Judges in the cases above referred to, and as has been held by the Circuit Court of the United States for this District, and by the Supreme Courts of several of the States, that the assignees of the notes were entitled to the benefit of the lien by which their payment was secured. *Lincoln v. Purcel et al.*, 2 *Head R.* 151; 3 *Head* 539; 2 *Head* 131, and cases cited in dissenting opinions above referred to.

But conceding the law to be, as decided by a majority of the Court in the above cases, that the assignment of a note secured by lien, reserved in the face of a deed, does not transfer the lien to the assignee so as to enable him to maintain a bill, in his own right, against the vendee to enforce the lien upon the lands, yet such is not precisely the attitude of this case. But here the holder of one of the notes brings before a Court of equity the vendor, as well as the vendee, and the holders of the other notes given for the purchase money of the lands, and asks that the holders of the notes be subrogated to the rights of the vendor, and that the lands be sold, the debts marshaled, and the proceeds distributed ratably among them. Why should not this be done? The vendee has not paid for the lands; they are bound upon the face of his deed for the purchase money, and he should not be permitted to keep them without paying for them. The vendor might have enforced the lien by bill against the vendee and the holders of the notes, to protect himself as endorser of the notes, but he has not done so, and may never choose to do so. He may be insolvent and indifferent about the matter. Then unless this bill can be maintained, though the lands stand charged upon the public records with a lien for the payment of the notes given for the purchase money, no one can enforce this lien even in a Court of equity.

And why should a Court of equity, with all the parties before it, not decree a sale of the lands, and give the proceeds to the holders of the notes for the purchase money? Surely the mere technical conclusion that the lien reserved in the deed did not follow the notes into the hands of the assignees, is not a good reason why a Court of equity, with all the parties before it, should not decree that the purchaser of the lands should pay for them, or the lands he sold for the satisfaction of the debt, and that the money should go to the person equitably entitled to it.

The decree of the Court below must be reversed, and the cause remanded with instructions to the Court to overrule the demurrer to the bill, and proceed with the cause, etc.

OPINION DELIVERED BY THE SUPREME COURT OF THE STATE ARKANSAS, APRIL 17, 1875, in the case of

WILLIAM S. TURNER, use of L. & I. W. CAGE, *Appellants*,
v.
JOHN J. HORNER, *ad. et al.*, *Appellees.*

Appeal from Phillips Circuit Court, in Chancery.

In 1858 the complainant, William S. Turner, sold to James H. Keys a tract of land for the price of $3200, of which $2000 were paid, and a note executed to Turner due one year after date for $1200, and in a further agreement in regard to the title to the land, Keys agreed to give the further sum of $320, which sum was added to the $1200, the first note given up and a second note given for $1520. A deed was executed to Keys for the land, which he held until 1865, at which time he died and his estate was administered upon.

Turner, the vendor, who held the note, lost it, but made such proofs of its loss, and that it had not been paid, that it was probated, allowed, and classed as a claim or judgment against Keys' estate. After this, Turner, by a written instrument, for value received, sold and transferred this judgment to F. C. Cage, who thereafter transferred the same to L. and I. W. Cage.

The administrator of the estate of Keys paid upon this claim or judgment $500.75, which, from the case presented, we may suppose was the distributive amount due out of the proceeds of the personal estate. The administrator of the estate of Keys filed his petition for the sale of the real estate of Keys, and such proceedings were had, that an order was made authorizing the administrator to sell the real estate of Keys, of which the tract sold by Turner to Keys was a part. Horner, the administrator, advertised the land for sale, and the complainant Turner, for the use of L. & I. W. Cage, filed his bill to injoin the sale of the land so conveyed by Turner to Keys, and to assert a vendor's lien on the lands to satisfy the claim or judgment which he had sold to F. C. Cage, who had assigned it to L. & I. W. Cage.

The heirs and administrator of Keys were made parties to the bill. Answers were filed; one of which questioned the equity of the bill by demurrer. The demurrer to the bill was sustained and the bill dismissed, and plaintiff appealed to this court.

There is no question but that Turner as vendor, had a lien upon the land sold by him to Keys for the payment of the balance of the purchase money, and that the mere fact of his probating his claim and having it classed and allowed in the Probate Court did not affect his lien right to satisfaction, and as this is a mere implied lien, not contracted for, under our administration law, it is questioned whether he could assert his right to satisfaction out of the land until the personal assets had been first exhausted. *Gould's Dig., ch. 67, page* 115.

But the question is, whether by parting with his debt, he did not deprive the owners of the debt of the benefit of this lien.

In *Leading Cases in Equity, Hare v. Wallace, notes,* vol. 1, page 366, is said: "The lien exists only as between the vendor and vendee, and perhaps their privies in estate or law, and there only for the unpaid purchase money. It is merely a personal and equitable right, not passing with the assignments of the vendor's obligation, but extinguished when an assignment takes place. Such is the decision of the courts of most of the States and the repeated decisions of this court."

Where the title to the estate is not parted with, or the debt is secured by an express lien by contract, the rule is different.

In this case, if Turner had parted with the debt by an assignment of the note for the purchase money, it is conceded that the lien would have been lost, but his debt had been merged into a judgment, and was not assignable, bnt was sold to Cage, by force of which although the right to enforce a satisfaction would have been different, still the debt, the right to the money, was absolute as if passed by assignment of the note; and if, as has been conceded, the lien would not pass with the debt into the hands of the assignee of the note, we can see no good reason why it should pass to the purchaser of the debt. In either case, the vendor has parted with his debt, and has no right to satisfaction by force of the lien, because he has no debt to be satisfied.

The authorities cited by counsel do not, in our opinion, conflict with this view of the case. In the case of *Crawley v. Riggs*, 24 *Ark.*, 566, the notes were assigned as collateral security, and when the court say, in the opinion delivered in that case, that Riggs could have paid off the note and have enforced his lien, it was because, then, the debt and the lien, which had been separated by the assignment, were again united in the vendor; and fully accords with the decision made at the present term of this court in the case of *Bernard Bernays v. Field & Dolly et al.*

In that case Douglass sold certain lots of land and gave to the purchaser a bond for title, upon the payment of the purchase money. This bond for title was, by assignment, several times transferred to other parties. Under this state of case it was held that Douglass had the legal title to the lots, with a specific lien upon them for the payment of the purchase money, and that the effect of the subsequent sales and assignments of the bond created subsequent liens upon the lots for the payment of the purchase money, to be satisfied in their order, in the nature of subsequent mortgages. 14 *Ark*, 626; 13 *Id.*, 584; 16 *Id.*, 145; 18 *Id.*, 553.

Dolly and Field, to whom the bond for title had been assigned, made an assignment of the bond to Rector, who executed his note to Field & Dolly for the payment of the purchase money. They assigned the note to Benedict, Hall & Co. The note was protested for non-payment, and paid and taken up by Field & Dolly, to whom Benedict, Hall & Co. re-assigned the note, but without recourse on them.

Upon this state of case, it was held that Benedict, Hall & Co., as assignees, held a lien upon the lots for the payment of the notes given for the purchase money, and that under ordinary circumstances where an assignment is made without recourse, as held in *Williams v. Christian*, 24 *Ark.*, 566, the vendor's lien would not pass; but as the assignment was made to Field and Dolly, who held the vendor's lien, the effect of which was to reunite in the vendors the debt and the right to enforce satisfaction under the lien for which they had contracted, they had a right

to enforce the vendor's lien upon the lots so conveyed. See *Kelly v. Payne*, 18 *Ala.*, 371.

The lien right to satisfaction in this case was upheld upon the express ground that the debt and the lien right had, by the re-assignment been united in the vendor.

But in the case under consideration, Turner, the vendor, has not regained his title to the debt. He sues as a mere nominal party for the use of L. & I. W. Cage, to whom the judgment was sold, and insists that he has a right to do this, because, should the estate of Keys prove to be insufficient to pay the debt, that Cage will have his recourse against him for any balance due Cage upon his purchase. In this, no greater liability to pay rests upon him than if he had assigned the note. The liability to pay is a mere contingency, which from the state of case presented, may never arise. Under this view of the case, we think that the demurrer was properly sustained to the bill.

Let the decree of the court below be affirmed.